

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
HYDERABAD**

REGIONAL BENCH - COURT NO. - I

**Service Tax Appeal No. 25624 of 2013**

(Arising out of **Order-in-Original** No.111/2012 dated 11.12.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

**Commissioner of Central Excise** .. **APPELLANT**  
**And Service Tax**  
**Guntur**

P.B.No. 331, C.R.Building,  
Kannavari Thota,  
Guntur,  
Andhra Pradesh – 522 004.

VERSUS

**M/s Hindustan Coca Cola** .. **RESPONDENT**  
**Beverages Pvt Ltd.,**

Atmakur,  
Guntur District,  
Andhra Pradesh -522 508.

**APPEARANCE:**

Shri Ch. Venkat Reddy & Shri B. Sangameshwar Rao, Authorized Representatives for the Appellant.

Shri B. Venugopal, Advocate for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**  
**HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER No. A/30550/2025**

Date of Hearing: 01.12.2025  
Date of Decision: 01.12.2025

**[ORDER PER: A.K. JYOTISHI]**

The Department has come in appeal against Order-in-Original No. 111/2012 dated 11.12.2012, whereby, the Adjudicating Authority had dropped the proceedings initiated by Show Cause Notice dated 10.04.2012, wherein, the Department had raised the demand of Rs. 66,59,845/-. This demand was on account of non-payment Service Tax during the period of 16.05.2008 to 22.11.2008 under the category of "Supply of Tangible Goods" Service (SOTG).

2. The main grounds of appeal by the Department are as under:

"1. Supply of bottles and crates is ancillary and allied venture having no relation with activity of manufacture and as such the rental charges collected

towards their supply is not includible in the assessable value of the aerated drink.

2. The bottles carry the brand name of the Respondent and are not actually sold but supplied on rental basis till the date of their actual return in terms of the agreement (written or oral) entered with the distributors.

3. The full possession of the goods is not transferred to the distributors and hence the subject transaction is not leviable to VAT as it is not la deemed sale in terms of Article 366(29A)(d) of the Indian Constitution. The said provision is reproduced below for ready reference,

(29A)"tax on the sale or purchase of goods" includes

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

4. The department relies on the Respondent's agreement with one of their distributor M/s. Sri Durga Agency, Gnnanavaram to argue that effective possession of the goods is not transferred".

3. The Learned AR reiterates the grounds taken in the appeal memorandum filed by the Department.

4. On the other hand, the Learned Advocate for the respondent submits that the issue is no longer res-integra and also settled by the Hon'ble High Court of Andhra Pradesh in their own case i.e. M/s Hindustan Coco Cola Beverages Pvt Ltd., Vs State of Andhra Pradesh [2013 (1) TMI 1009]. Further, following the said decision, the CESTAT has again set aside the demand in their own case i.e. M/s Hindustan Coca Cola Beverages Pvt Ltd., Vs CST, Delhi [2015 (12) TMI 442] and also in the case of M/s Bengal Beverages Pvt Ltd., Vs Commissioner of CGST & Excise [2020 (11) TMI 580]

5. Heard both the sides and perused the records.

6. The relevant facts of the case are the Department felt that the collection of rental charges on the bottles and crates, while supplying the aerated water

to the distributor and consumer was in the nature of taxable service falling under supply of Tangible Goods Service under Section 65(105)(zzzzj) of Finance Act, 1994. According to the Department, there was no transfer of right of possession and effective control when such plastic crates and bottles were sent by the respondent to the distributor and customer and thus, it would be covered under supply of Tangible Goods Service. We find that exactly similar factual matrix in respect of same appellants, as well in relation to another bottler namely M/s Bengal Beverages Pvt Ltd., was examined by the Co-ordinate Benches examined this issue and have held that in these transactions it can't be said that there is no transfer of right to use, hence, such transactions would be deemed sales leviable to VAT and not service leviable to Service Tax. Relevant para of the order of the Hon'ble High Court of Andhra Pradesh, supra, is cited below:

"37. The Tribunal at para 29 of its order extracted certain the portions from the minority judgment in 20 Century Finance Corporation Limited's Case (5 Supra) in coming to a conclusion that a transfer within the meaning of Art. 366 (29-A) (d) would be complete when the contract is executed and the control/ domain of the goods which are the subject of the contract are given to the hirer. But the majority in the said case held (at para 26 to para 28) that a transfer of the right to use any goods will be a deemed sale in the case of sub-clause (d); and that if the goods are available, the transfer of the right to use takes place when the contract in respect thereof is executed and the delivery of goods cannot constitute a basis for levy of tax on the transfer of right to use any goods. They held that where the goods are in existence, the taxable event on the transfer of right to use any goods. They held that where the goods are in existence, the taxable event on the transfer of the right to use goods occurs when a contract is executed between the lessor and the lessee and situs of sale of such a deemed sale would be the place where the contract in respect thereof is executed. In the present case, the end-customer might retain the bottle for more than 24 hours and after consuming the contents may even use it for storing water or other liquids. Similarly, the wholesaler/ retailer might be in possession of the crates/bottles for a period of time extending up to may be even six months. Thus for the said period both the end customer and the retailer / wholesaler would have control or

domain over the bottles and crates. Therefore, it cannot be said that there is no transfer of the right to use the goods exigible to tax u/s. 5-E of the Act. "

7. Therefore, we find that this issue is squarely covered by the judgment of the Hon'ble High Court of the Andhra Pradesh, as also by the Co-ordinate Benches at Delhi and Kolkata cited, supra, and, therefore, we do not find any merit in the appeal filed by the Department against impugned order. Accordingly, the appeal filed by the Department is liable to be dismissed.

8. Appeal dismissed.

(Operative part of this order was pronounced in court on conclusion of the hearing)

**(A.K. JYOTISHI)**  
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**