

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

E-Hearing
REGIONAL BENCH - COURT NO.I

Excise Appeal No.70015 of 2020

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-960-19-20 dated 23.09.2019 passed by Commissioner (Appeals) CGST, Noida)

**Commissioner of Customs &
Central Excise, Noida**

(C-56/42, Sector-62, Noida)

.....Appellant

VERSUS

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

(5th KM Milestone, Masuri-Gulawati Road,
PO-Dehra, Tehsil-Dhaulana, District-Hapur-245301)

....Respondent

APPEARANCE:

Ms. Chitra Srivastava, Authorized Representative for the Revenue
Shri Monish Panda, Advocate & Ms. Amrita Singh, Advocate for the
Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.- 70647/2024

DATE OF HEARING : 10.10.2024
DATE OF DECISION : 10.10.2024

P. K. CHOUDHARY:

The present appeal has been filed by the Revenue - Appellant assailing the Order-in-Appeal No.NOI-EXCUS-001-APP-960-19-20 dated 23.09.2019 passed by learned Commissioner (Appeals) CGST, Noida whereby he allowed the appeal filed by the Assessee before him.

2. The facts of the case in brief are that the Respondent is engaged in the manufacturing of aerated water, packaged drinking water, fruit juice or pulp-based drinks under the brand name Coca-Cola, Fanta, Thums up, Maaza etc. The Respondent is also manufacturing the product 'Minute Maid Nimbu Fresh¹' since February, 2010, classifying the same under the tariff item

¹ MMNF

22029020 as "Fruit pulp or fruit juice based drink". The fact of manufacture of the said product and clearance of the same under tariff item 22029020 was informed by the Assessee to the Department vide their letter dated 01.02.2010. A periodical Show cause notice² was issued to the Respondent alleging non-payment of duty to the tune of Rs.79,75,975/-. The Respondent filed a reply to the aforementioned SCN contesting all the allegations made therein and submitted that the classification made by the Respondent is correct. The Adjudicating Authority confirmed the duty demand as raised in the SCN's with interest and penalty. Being aggrieved, the Respondent filed an appeal before the Commissioner (Appeals). The learned Commissioner(Appeals) was pleased to allow the appeal filed by the Respondent in view of the Larger Bench's decision in the case of M/s Brindavan Beverages Pvt. Ltd. & Others vs. CCE & ST, Hapur 2019 (29) G.S.T.L. 418 (Tri.-LB). Department the present appeal before the Tribunal.

3. The issue involved in the present appeal for consideration that whether MMNF, the impugned product, will be classified under tariff item 22029020 as "Fruit pulp or fruit juice-based drink" or under the tariff item 22021020 as "Lemonade". The Respondent claims that the product in question is classifiable under tariff sub-heading 22029020, as 'Fruit pulp or fruit juice-based drink' whereas the Department claims the classification under tariff sub-heading 22021020 as "Lemonade".

4. Heard both the sides and perused the appeal records.

5. We find that the issue in the present appeal is no more *res integra* and is squarely covered by the decision of the Larger Bench of the Tribunal in the case of Brindavan Beverages Pvt. Ltd. & Others vs. CCE & ST, Hapur 2019 (29) G.S.T.L. 418 (Tri-LB) whereby it was held that the product MMNF is classifiable under Tariffs Sub-heading 22029020 as "fruit pulp or fruit juice-based drink".

6. We find that the Department has not filed any appeal challenging the Larger Bench's decision in the case of Brindavan

² SCN

Beverages Pvt. Ltd. & Others (supra). We further find that the same issue has also been settled in favour of the Appellant in Appellant's own case vide **Final Order No. A/85981-85983/2022 (Tri. Mumbai)** dated 12.10.2022 and by this Bench of the Tribunal vide **Final Order No.71423/2019** dated 19.07.2019. Both the orders relied on the decision of the **Larger Bench** of this Tribunal vide Miscellaneous Order No.70132-70134/2019, dated 30.04.2019 [also reported as **2019 (29) G.S.T.L. 418 (Tri. - LB)**] which held that the product "Minute Maid Nimbu Fresh" is classifiable under Tariff Item 22029020 of the Central Excise Tariff Schedule under the category of "fruit pulp or fruit juice based drinks". The Larger Bench did not agree with the decision in the matter of **M/s Hindustan Coca-Cola Beverages Private Limited vs. Commissioner of Central Excise Thane - I [2014 (310) E.L. T. 145 (Tri- Mumbai)]**, on which reliance has been placed in the impugned order by the Commissioner (Appeals). The Larger Bench held as under :-

"64. The fruit juice content of lime or lemon juice in MMNF, Nimbu Masala Soda or Nimbooz has been indicated to be not less than 5% and the Total Soluble solids is also not less than 10%. All the three products namely MMNF, Nimbu Masala Soda and Nimbooz, satisfy the requirements of Regulation 2.3.10 or Regulation 2.3.30. These products, therefore, would classify under Tariff Item No. 2202 90 20 as fruit juice based drinks. The Mumbai Tribunal in Hindustan Coca Cola was, not justified in holding that the Regulations are not required to be examined.

65. The irresistible conclusion, therefore, that follows from both the common parlance test and the supporting legislation test is, therefore, that the three products MMNF, Nimbu Masala Soda and Nimbooz would classify under Tariff Item No. 2202 90 20 as fruit juice based drinks.

66. It can however be urged that even when lemon or lime juice is added to water as a flavoring agent, the product can still be called lemonade. Though it has to be seen whether the product is essentially waters with added flavour or whether lemon juice is the basis of the fruit drink, but the answer also lies in the definition of "non-carbonated ready to serve fruit beverages" under Regulation 2.3.10 and "carbonated fruit beverages and fruit drinks" under Regulation 2.3.30. It would follow from these Regulations that even when lime juice is added but the fruit content of lime or lemon juice is not less than 5%, the product would

be classified as fruit juice based drinks but if the lime or lemon juice content is less than 5%, then it would classify as lemonade.

67. Accordingly, the reference is answered as follows :

The product "Minute Maid Nimbu Fresh (hereinafter referred to as MMNF) manufactured by Brindavan Beverages Private Limited, and 7UP "Nimbooz Masala Soda" or 7UP "Nimbooz" manufactured by PepsiCo India Holdings Private Limited are classifiable under Tariff Item 2202 90 20 of the Central Excise Tariff Schedule under the category of "fruit pulp or fruit juice based drink".

7. The above referred decision of the Larger Bench has been followed in the following matters:-

- **M/s Varun Beverages Pvt. Ltd. v. Commissioner of Customs, Central Excise and Service Tax, Noida, Final Order No. 71374-71377/2019 (Tri. Allahabad).**
- **M/s Aradhana Foods and Juices Pvt. Ltd. v. Commissioner of Customs, Central Excise and Service Tax, Hyderabad-I, 2021 (10) TMI 528 (Tri. Hyderabad).**
- **M/s. Pepsico India Holdings Pvt. Ltd. v. Commissiner of Central Excise, Puducherry, 2020 (2) Tmi 288 (Tri. Chennai).**

8. In view of the above discussion, we do not find any infirmity in the impugned order and accordingly the same is sustained. The appeal filed by the Revenue is dismissed.

(Operative part of the Order pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS