

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

(E-Hearing)

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70276 of 2020

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1253-19-20, dated - 11/12/2019 passed by Commissioner (Appeals) CGST, Noida)

**Commissioner, Central Tax, GST & Service Tax, Gautam
Buddha Nagar** **.....Appellant**

(C-56/42, Renu Tower,
Sector-62, Noida-201301)

VERSUS

M/s Varun Beverages Ltd. **....Respondent**

(Plot No.02, Surajpur Bye Pass Road, Greater Noida)

APPEARANCE:

Shri Santosh Kumar, Authorized Representative for the Appellant
Shri R. Sudhinder, Advocate for the Respondent

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

FINAL ORDER NO.-70950/2024

DATE OF HEARING : 28.11.2024
DATE OF DECISION : 28.11.2024

P. K. CHOUDHARY:

The present appeal has been filed by the Revenue assailing the Order-In-Appeal No. NOI-EXCUS-002-APP-1253-19-20, dated -11/12/2019 passed by the learned Commissioner (Appeals) CGST, Noida.

The issue involved in the present appeal is pertaining to the classification of the products "Nimbooz by 7up" (cleared as "Tropicana Twister Nimboz") and "Nimbooz Masala Soda by 7up" which was classified by the Respondent, M/s Varun Beverages under Chapter Heading No. 2202 90 20 of the First Schedule to the Central Excise Tariff Act, 1985 as "Lemonade". The order-in -

Original accordingly confirmed the Central Excise duty alongwith interest and imposed penalty.

2. The Respondent-Assessee filed appeal before the First Appellate Authority and the learned Commissioner (Appeals), vide the impugned Order-In-Appeal, allowed the appeal of the Assessee by setting aside the Order-In-Original. Hence, Revenue has filed the present appeal before the Tribunal.

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

4. We find that the classification of the product is no more *res integra*. This issue has been decided by the Larger Bench of the Tribunal in the case of Brindavan Beverages Pvt. Ltd. V/s Commr. of Cus., C.EX. & S.T., Meerut 2019 (29) G.S.T.L. 418 (Tri.-LB) that the classification of the products shall fall under Tariff Item No.2202 90 20 of the Central Excise Tariff under the category of "Fruit pulp or fruit juice based drinks".

5. The above decision of the Larger Bench has been relied upon in the Respondent's own case Varun Beverages Ltd. V/s Commissioner of Central Excise, Noida-II, 2022 (380) E.L.T. 315 (Tri.All.). Relevant paragraphs of the decision are reproduced below:-

"1. *M/s Varun Beverages Limited [the appellant] has filed this appeal to assail the order dated October 19, 2016 passed by the Commissioner of Central Excise Commissionerate, Noida-I [the Commissioner] holding that the products viz. "Nimbooz by 7 up" (cleared as "Tropicana Twister NIMBOZ") and "Nimbooz Masala Soda by 7 up" merit classification under CETH 2202 10 20 of the First Schedule to the Central Excise Tariff Act, 1985 as "Lemonade". The order has, accordingly confirmed the demand of Central Excise duty with interest and penalty.*

2. *Shri B.L. Narasimhan, Learned Counsel appearing for the appellant has submitted that in view of the order dated April 30, 2019 passed by a Larger Bench of the Tribunal in Brindavan Beverages Pvt. Ltd. v. Commissioner of Customs & Central Excise & Service Tax, Meerut [[2019 \(29\) G.S.T.L. 418](#) (Tri. - LB)], the products deserve to be classified under Tariff Item 2202 90 20 of the Central Excise Tariff Schedule under the category of "fruit pulp or fruit juice based drinks".*

3. *****

4. *The Larger Bench of the Tribunal answered the reference in paragraph 67 of the order and it is reproduced below :*

"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 drinks".

6. In view of the above discussion, we do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals) and accordingly, the same is sustained. The Appeal filed by the Appellant-Revenue is dismissed.

(Operative part of the order is pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal