

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

REGIONAL BENCH - COURT No. I

Excise Appeal No.70243 of 2017-Division Bench

(Arising out of Order-in-Original No. KNP-EXCUS-000-COM-049-16-17 dated 14/10/2016 passed by Commissioner of Central Excise, Customs & Service Tax, Kanpur)

M/s Durga Beverages

.....Appellant

(Gwalior Road, Behind Asharam Bapu Ashram Jhansi)

VERSUS

Commissioner of Central Excise, Kanpur

....Respondent

(7/117 Sarvodaya Nagar Kanpur-208005)

APPEARANCE:

Shri Bipin Garg, Advocate for the Appellant

Shri Shiv Pratap Singh, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. - 71620 / 2019

Date of Hearing : 20 August, 2019

Date of Decision : 20 August, 2019

PER: ARCHANA WADHWA

After hearing both the sides, we find that the appellant is engaged in the manufacture of Packaged Drinking Water. Their factory was visited by the Central Excise officers on 02/07/2013, who conducted various checks and verifications and resumed certain records. Scrutiny of the record let the officer to believe that the appellants have crossed the small scale exemption limit in terms of the Notification No.08/2003-CE dated 01/03/2003 and in which case they were liable to discharge the duty liability.

2. Based upon the above, proceedings were initiated against them proposing confirmation of demand alongwith interest and imposition of penalties etc. During the course of adjudication the appellant took a categorical stand before the Adjudicating Authority that the photocopies and their balance sheet attached as relied upon documents with the show cause notice have been manipulated by the officers by changing the dates and the Financial Year at the top of the pages. Similarly his attention was drawn to the other manipulation done by the officers. As the learned advocate appearance was caused before the Adjudicating Authority on 29/08/2016, when his attention was drawn to all such changes made by the officers in the photocopies of the balance sheet, to which the Adjudicating Authority appeared convinced and promised to seek clarifications from his officers on the next date of hearing. The next date of hearing was fixed on 15/09/2016 by way of a letter dated 06/09/2016. The said letter was received in the local office of the appellant on the evening of 14/09/2016 and as such it was not possible for them to make arrangement for appearance before the Adjudicating Authority on 15/09/2016. Accordingly email was sent to the office of Commissioner seeking adjournment. No further date was fixed by the Adjudicating Authority and the impugned order was passed.

3. According to learned advocate, the said development reflects upon the gross violation of principle of natural justice inasmuch the appellants have drawn the attention of the Adjudicating Authority to the various manipulated facts in their balance sheet and having made a promise for the next date of hearing he proceeded to pass the impugned order without giving another effective opportunity to them. On being questioned learned advocate agrees that they have original copies of the balance sheet and if given a chance they are in a position to establish that the various figures in the photocopies of the balance sheet, which have been relied upon by the Revenue, stands changed and manipulated.

4. Inasmuch as the appellant had not produced the original copies before the Adjudicating Authority as also in view of the fact that no effective opportunity was given to the appellant after pointing out the manipulation, we are of the view that the impugned order is liable to set aside and the matter needs to be remanded. We order accordingly. We further make it clear that we have not heard the matter on merits and have not decided on the same. The appellant is at liberty to contest the case before the Adjudicating Authority on all the issues.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks