FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 18/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70977/2016-EX[DB] dated 14/06/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1902/2007	AMRIT BOTTLERS PVT. LTD. CHANDPUR HARBANS, PO.-DABHASEMAR, FAIZABAD, U.P.
		Name and Address of Respondent
2		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Copy To
3Advocate(s) / Consultant(s):

S. P. OJHA
299, BAGHAMBARI HOUSING
SCHEME, ALLAHPUR,
ALLAHABAD,UTTAR PRADESH

4, Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SIGN (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/1902/2007-EX[DB]

(Arising out of Order-in-Appeal No. 105/CE/ALLD/2007 dated 22/05/2007 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Amrit Bottlers Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Shri S.P. Ojha, Consultant for Appellant
Shri D.K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 14/06/2016

FINAL ORDER NO. 70977/2016

Per: Anil Choudhary

The present appeal is filed by the appellant, M/s Amrit Bottlers Pvt. Ltd., against Order-in-Appeal No. 105/CE/ALLD/2007 dated 22/05/2007 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad.

2. The brief facts of the case are that the present appeal has been filed by M/s Amrit Bottlers Pvt. Ltd., Chandpur, Harbans, PO Dabha Semar, Faizabad (U.P.) (hereinafter referred to as 'the appellant') against the Order-in-Appeal dated 22-05-2007.

2.1 As per facts of the present case in brief, the appellants are engaged in the manufacture of aerated waters falling under chapter sub headings 2201.20 and 2202.20 of the first schedule to the Central Excise Tariff Act, 1985 and avail benefit under Cenvat credit scheme. During the course of preventive checking of the factory of the appellants, the officers of Central Excise Division, Faizabad found that after the bottled aerated water was fully manufactured in accordance with the Note (2) of Chapter 22 of the Central Excise Act, i.e. the bottles were filled, capped and finally coded with MRP and date of manufacturing etc., the same were removed in the form of samples for in house laboratory testing by the appellants. During the process of testing etc. bottles were broken and the aerated water was drained out.

bottles were broken and the aerated water was drained out. However, it was allegedly found that no accounts were maintained in respect of such broken bottles in the statutory records viz. RG-1 / Daily Stock Account, by the appellants, nor Central Excise duty leviable on them was being paid by the appellants. It was alleged that details of such broken bottles were never reflected by the appellants in their monthly returns viz. RT-12/ER-1, submitted to the department, nor the department was informed in any other manner by the appellants as regards aforesaid breakage of fully manufactured bottles of aerated waters. As such, it was alleged that the appellant suppressed above facts from the department with intent to evade payment of Central Excise duty. Therefore, calling ~~out~~ for details pertaining to such breakage of fully manufactured bottles of aerated water from the private records of the appellants, the impugned Show Cause Notice was issued to them by the department in respect of the period from April, 2005 to December, 2005 for demand of Central Excise duty amounting to Rs.13,496.00/- along with interest under proviso to ~~under~~ Section 11A (1) of the Central Excise Act, 1944 read with Section 11AB of the Act ibid and Rule 49 (1) of the erstwhile Central Excise Rules, 1944 (now Rule 4 read with Rules 10 & 21 of the Central Excise Rules, 2001/2002) and for imposition of penalty under Section 11AC of the Act ibid as well as under Rule 173Q of

2.2 The Adjudicating Authority confirmed the demand of duty along with interest and imposed a penalty of Rs.13,496.00/- on the appellants under provisions of Act and Rules ibid, as proposed in the impugned Show Cause Notice. Being aggrieved with the above order of the Adjudicating Authority, the Appellant appealed unsuccessfully before the Commissioner (Appeals) and now is in appeal before this Tribunal.

3. Heard the parties.

4. Having considered the rival contentions, we find that the present issue in this appeal is no longer res-integra and the same is settled by the ruling of the Hon'ble Allahabad High Court in the appellant's own case in Central Excise Appeal No. 11 of 2005 dated 18-07-2014. Following the ratio of the judgments of the Hon'ble Allahabad High Court in the case cited (supra), we set aside the impugned order and allow the appeal with consequential benefits, if any, in accordance with law.

(Pronounced in Court)

-Sd-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

-Sd-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
26.10.16
सहायक रजिस्ट्रार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001