FAX : 0532-2400149

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

Dated: 19/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70999/2016-SM[BR] dated 23/09/2016

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/115/2009	MOON BEVERAGES LTD. A-32, SITE-IV, INDL. AREA, SAHIBABAD, GHAZIABAD (U.P.)
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3 Advocate(s) / Consultant(s):

PRADEEP JAIN,ADVOCATE
JAIN GLOBUS LAW FIRM, 370 371/2,
IST FLOOR, SAHI HOSPITAL ROAD,
JANGPURA(BHOGAL),
NEW DELHI

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

ISSUED ON

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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No. E/115/2009-EX[SM]

Arising out of Order-in-Appeal No. 207-CE/GZB//2008 dated 21.10.2003 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Meerut-I.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

Moon Beverages Ltd. ...APPELLANT

VERSUS

C.C.E., Ghaziabad ...RESPONDENT

APPEARANCE

Shri Tarun Chawla, Advocate for the Appellant
Shri B Kumar Ayer, Supdt. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 23.09.2016

FINAL ORDER NO. – 70999/2016

Per Mr. Anil Choudhary :

The issue in this appeal is whether the Revenue have rightly invoked the extended period of limitation for issue of show cause notice.

2. The admitted facts are that in the course of audit for the period May, 2003 to February, 2004 the Revenue found that the appellant have availed Cenvat credit amounting to Rs.30,54,418/- received on glass, bottles and plastic crates under cover of invoice issued by Hindustan Coca-Cola Beverages Private Ltd., on which an endorsement was made - "Cases are temporarily on loan not for sale". Accordingly, the Range Superintendent vide letter dated 01/12/2004 pointed out the audit objection to the appellant-assessee stating that the Cenvat credit is not allowable and accordingly directed to reverse the same. The appellant immediately filed reply dated 20/12/2004 taking a categorical stand that the provisions of Cenvat Credit Rules provide that inputs, including packing material, received in the factory under the cover of an invoice is eligible input for the purpose of grant of Cenvat credit. The receipt of inputs and the use of the same as packing material etc. in the manufacture of ~~erected~~ aerated water is not under dispute and accordingly Cenvat credit cannot be denied. Reliance was placed on the ruling of this Tribunal in ***Mahadev Industries Vs CCE 2000 (115) ELT 452***. Pursuant to the said stand taken by appellant Revenue did not raise any further objection and after about three years issued show cause notice dated 03/12/2007 raising the same objection.

3. Heard the parties.

4. Having considered the rival contentions, I find that no case of suppression or ~~costumes~~ contumacious conduct is made out against the appellant. Ar Further, the appellant had taken a categorical stand on the objection raised by the Revenue as early as in December, 2004 and thereafter in absence of any further correspondence by Revenue the matter stood settled. In these facts and circumstances I hold that the extended period of limitation is not invocable and accordingly the show cause notice is bad. Accordingly, I set aside the impugned order and allow the appeal with consequential benefits, if any, to the appellant in accordance with law.

(Order was dictated in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

patel/-