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/70990/2016-EX[DB] 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/418/2009	PEPSICO INDIA HOLDINGS PVT. LTD. A-36, SIDA, SATHARIYA JAUNPUR (U.P.)
		Name and Address of Respondent
2		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Copy To

3 Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, 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

27/10/16

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/418/2009-[SM]

Arising out of Order-in-Appeal No.110/CE/APPL/ALLD/08 dated 20.11.2008 passed by Commissioner (Appeals) Customs & Central Excise, Allahabad.

For approval and signature:

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

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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

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M/s Pepsico India Holdings Pvt. Ltd.

...APPELLANT(S)

VERSUS

C.C.E., Allahabad

...RESPONDENT (S)

APPEARANCE

Shri Atul Gupta, Advocate for the Appellant (s)
Shri Pawan Kumar Singh Supdt. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 23.09.2016

FINAL ORDER NO.- 70990/2016

Per Mr. Anil Choudhary :

The appellant, M/s Pepsico India Holdings Pvt. Ltd., is in appeal against Order-in-Appeal No.110/CE/APPL/ALLD/08 dated 20.11.2008 passed by Commissioner (Appeals).

2. The brief facts of the case are that the appellant is engaged in the manufacture of Aerated water falling under chapter sub-heading No.22021010, 22011020 and 2106690 of the Schedule to the Central Excise Tariff Act, 1985 and avails of benefit of Cenvat Credit. During the examination of records of the appellant for the period July, 2005 to June, 2007, it was observed that in the process of manufacturing and bottling Aerated Water, few bottles were being taken out on regular interval, as samples for testing in the factory laboratory. Such samples were neither being accounted for in the daily production/stock registers, nor any Central Excise duty was being paid on those. As per manufacturing process flow chart, all inputs of the products are mixed in Drum connected with a Filler, which fills the liquid into bottles and fixes crown caps. Thereafter, bottlers are sent for printing which render the product marketable and no further process are taken for marketing purpose. Though, only a little quantity of liquid (5 ml to 10 ml) prepared in Drum are required for testing, yet the appellants are taking out full bottles of the products as samples containing 100 ml, 200 ml and 300 ml, and destroy the same at the cost of Central Excise duty. On the alleged contravention of Rule 9(1) of the Central Excise Rules, 1944 and Rules 4,5,6,811 and 12 of the Central Excise Rules, 2001 and 2002. Accordingly, two show cause notices were issued to the appellants. First is, the show cause notice dated 26.07.2006 for the period July,

2005 to June, 2006, raising demand for total amount of duty Rs.3726 U/s 11A(I) along with interest under Section 11AB of the Act, invoking penal provisions of Section 11AC of the Act, read with Rule 25 of the Central Excise Rules, 2002. Second is the show cause notice dated 22.06.2007, for the period July, 2006 to June 2007, raising demand of total amount of duty Rs.417.00 under Section 11A(I) along with interest under Section 11AB of the Act, invoking penal provisions of Section 11AC of the Act, read with Rule 25 of the Central Excise, Rules, 2002.

4. Heard the parties.

5. Having considering the rival contentions, I find that the present issue relates as to whether the appellants are liable for duty on the bottlers/samples withdrawn for in-house testing. I find that the instant issue is squarely covered in the earlier order passed by this Tribunal in the case of M/s Pepsico India Holdings Pvt. Ltd. Vs. CCE & Customs, Allahabad vide Final Order No.70341/2016 dated 15.06.2016 in favour of the assessee. Accordingly, following the precedent decision of this Tribunal, I set aside the impugned order and allow the appeal. The appellant will be entitled to consequential benefits, if any, as per Law.

(Pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy

26/10/16

सहायक पंजीकार / Asstt. Registrar
C.E.S.T.A.T.
38, M. G. MARG, ALLAHABAD-211001