CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 04/03/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70096/2016 DB dated 15/01/2016

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
	E/771/2007EX	AMRIT BOTTLERS PVT LTD CHANDPUR HARBHANS PO-DABHASEAMR, DISTT- FAIZABAD(UP)

Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, ALLAHABAD 38,M.G.MARG, CIVIL LINES ALLAHABAD

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s — SH S.P.OJHA,CONST
299,BAGHAMBARI HOUSING
SCHEME, ALLAHAPUR
ALLAHABAD

4 Bar Association, CESTAT, ALLAHABAD

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitemah 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Penjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

Date of hearing/order: 15.01.2016

Excise Appeal No. E/771/2007-EX[DB]

[Arising out of the Order-in-Appeal No.13/CE/Alld/2007 dated-24.01.2007 passed by the Commissioner (Appeals), Central Excise, Allahabad]

For approval and signature:

Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?
Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
Whether their Lordships wish to see the fair copy of the Order?
Whether Order is to be circulated to the Departmental authorities?

M/s. Amrit Bottlers Pvt. Ltd.

..Appellant

Vs.

C.C.E., Allahabad .... Respondent

Appearance:

Shri S.P. Ojha, Consultant

for the appellant

Shri Rajeev Ranjan, (Joint Commissioner),A.R.

for the Respondent/Revenue

Excise Appeal No. E/771/2007-EX[DB]

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

Final Order No. 70096/20

Per:Mr. Anil Choudhary

This is an appeal filed by the appellant against Order-in-Appeal No.13/CE/Alld/2007 dated-24.01.2007.

2. After hearing both the sides, we find that the appellants are engaged in the manufacture of Aerated water. During the course of manufacture, some defective material arise either on account of breakage of bottles, badly crowned caps and/or over-filled or under filled bottles.

3. The Revenue's contention is that the aerated water was a fully manufactured product before the rejection and drainage of the same and as such, were liable to duty in as much as they were not entered in R.G.I., there was violation on the part of the appellant. It is their contention that the appellant should have followed the due procedure for remission of duty.

4. We find that the issue is no more res-integra and stands settled by the Tribunal's decision in the case of Hindusthan Coca Cola Beverages Pvt. Ltd. Vs. Commissioner of Central Excise, Patna reported in 2006 (203) ELT 69. Revenue's appeal against the said appeal stands rejected by the Hon'ble High Court of Allahabad order

dated 22.10.2010 by observing that there is no illegality in the Tribunal's order. We also note that the issue stands decided in the appellant's own case AMRIT Bottlers Pvt. Ltd. Vs. Commissioner of Central Excise, Allahabad Final order No. 158/2007-SM (BR) dated-10.11.2006.

5. The ratio of the above decisions is that drainage of aerated water either before bottling of the same or in respect of over-filled or under-filled bottles cannot be held to be completely manufactured goods in view of provisions of Standard Weights and Measures Act, 1976 in as much as they had not attained marketable stage.As such, it is held that provisions of remission of duty are not applicable to the said goods. By following the ratio of the said decisions, we set aside the impugned order and allow the appeal with consequential relief to the appellants.

(Operative part of the order already pronounced in the open Court)

Sd/-
(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
15.3.16
सहायक पंजीकार / 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