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: 06/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70938/2016-SM[BR] dated 16/09/2016

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/975/2008	PEPSICO INDIA HOLDINGS PVT. LTD. CORPORATE OFFICE: 3B DLF,CORPORATE PARK, 'S' BLOCK, QUTAB ENCLAVE,PHASE-III, GURGAON.
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

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 121005 (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/975/2008-EX[SM]

(Arising out of Order-in-Appeal No. 01-CE/MRT-II/2008 dated 07/01/2008 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

For approval and signature:

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

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

Pepsico India Holdings Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri Hrishikesh, Advocate, for Appellant
Shri M.P. Damle, Assistant Commissioner, (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 16/09/2016

FINAL ORDER NO. 70938/2016

Per: Anil Choudhary

The present appeal is filed by the appellant, M/s Pepsico India Holdings Pvt. Ltd., against Order-in-Appeal No. 01-CE/MRT-II/2008 dated 07/01/2008 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II.

2. The brief facts of the case are that the appellant is a manufacturer of beverages. They paid duty on glass bottles and used them for bottling the beverages. Some bottles break due to wear and tear or in the process of bottling. Such broken bottles were cleared as scrap by the appellant. It appeared to Revenue that such broken/damage bottles are manufactured by the appellant and the removal of glass scrap is chargeable to duty under Tariff Heading No. 7001.10.

3. Heard both sides.

4. Having considered the rival contentions, I find that the issue here is squarely covered by a Division Bench decision of this Tribunal between these very parties, wherein vide Final Order No. A/51702/2015-EX[DB] dated 16-04-2015, this Tribunal have held that the provisions of payment of duty on removal of capital goods as scrap was introduced vide Rule 3 (5) of Cenvat Credit Rules, 2004, specifically providing that when Cenvat credit has been taken in respect of certain inputs or capital goods and the same are cleared as waste or

scrap, an amount as specified in that sub-rule would be payable (by way of reversal). It is further observed that Revenue have demanded Central Excise duty by treating glass waste as manufactured product and this issue has been examined by the Tribunal on the basis of Section 2 (d) of Central Excise Act, 1944 and held that when glass bottles which get damaged or broken during the process of filling and handling etc., the glass scrap is not as a result of manufacture, hence, not excisable under sub-heading 7001.10 of the tariff, and as such, no Excise duty is payable. Accordingly, I allow this appeal with consequential benefits to the appellant and the impugned order is set aside.

(Dictated and pronounced in Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
25.10.16
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