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

Dated: 05/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70821-70826/2017-EX[DB] dated 07/08/2017

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/376/2010	**AMRIT BOTTLERS PVT. LTD.** CHANDPUR HARBANS, P.O. DABHASEMAR, DISTT. FAIZABAD (U.P.)
2	E/377/2010	**SHRI RAKESH LADHANI** M/S AMRIT BOTTLERS PVT. LTD. , CHANDPUR HARBANS, P.O. DABHASEMAR, DISTT. FAIZABAD (U.P.)
3	E/814/2010	**BRINDAVAN BOTTLERS PVT. LTD.** P.O. SAFEDABAD, BARABANKI, (U.P.)
4	E/815/2010	**SHRI M.D. LADHANI, MANAGING DIRECTOR, OF** M/S BRINDAVAN BOTTLERS PVT. LTD., P.O. SAFEDABAD, BARABANKI, (U.P.)
5	E/2901/2009	**VARANASI BOTTLING COMPANY LTD** Aakashdeep, 108-B, Ravindrapuri, Lane no 10, Varanasi(UP)
6	E/2902/2009	**C.P.KEJRIWAL,MANAGING DIRECTOR** M/s Varanasi Bottling Company Pvt ltd, Aakashdeep, 108-B, Ravindrapuri, lane No 10. Varanasi(UP)
		Name and Address of Respondent
7		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
8		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
9		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

10 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

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11 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

-

12 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

Other Appellants and Respondents as per Annexure

Copy To

13Advocate(s) / Consultant(s):

Vineet Kumar Singh,Advocate
5 Narain Nagar, Sector 11,
Indira Nagar,
Lucknow,
Uttar Pradesh

14 **ATUL GUPTA, (ADV.) ALD**
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

15 Bar Association, CESTAT, Allahabad

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

17 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

18 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai 17

19 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

20 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

21 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

22 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

23 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

24 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

25 C.D.R. 26 Office Copy 27 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL Nos. E/2901-2902/2009, E/376-377/2010 & E/814-815/2010-EX[DB]

(Arising out of Order-in-Original No. 27/PKJ/CCE/ADJN./2009 dated 30/07/2009 (in Appeal Nos. E/2901-2902/2009). Order-in-Original No. 58/PKJ/CCE/ADJN/2009 dated 19/11/2009 (in Appeal Nos. E/376-377/2009) & Order-in-Original No. 01/CE/PKJ/CCE/ADJN./2010 dated 08/01/2010 (in Appeal Nos. E/814-815/2010) all passed by Commissioner of Central Excise (Adjn.). New Delhi)

M/s Varanasi Bottling Company Ltd.,

Shri C.P. Kejriwal, Managing Director,

M/s Amrit bottlers Pvt. Ltd.,

Shri Rakesh Ladhani

M/s Brindavan Bottlers Pvt. Ltd. &

Shri M.D. Ladhani, Managing Director **Appellant(s)**

Vs.

Commissioner of Central Excise, Allahabad **Respondent(s)**

Appearance:

Shri Vineet Kumar Singh (Advocate) & Shri Atul Gupta (Advocate) for Appellant(s)

Shri Pawan Kumar Singh Supdt. (AR) for Respondent(s)

CORAM:

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

Date of Hearing : 07/08/2017
Date of Decision : 07/08/2017

FINAL ORDER NOs.-70821-70826/2017

Per: Anil G. Shakkarwar

The above stated appeals are having a common issue and, therefore, they are taken together for decision. The common issue involved is whether the figures reported as sales figures of Aerated Drinks also called Soft Drinks to the supplier of concentrate are more reliable as compared to the Central Excise records maintained in the form RG-1 and quantity manufacture reported in RT-12 returns submitted to the Range Superintendent regularly on the monthly basis for the period from 1988 to 1993.

2. The brief facts of the case are that the M/s Varanasi Bottling Company Ltd., M/s Amrit Bottlers Pvt. Ltd. and M/s Brindavan Bottlers Pvt. Ltd. were manufacturers of 'Aerated Soft Drinks' falling under Chapter 22 of first Schedule to Central Excise Tariff Act, 1985. They used to manufacture Aerated Drinks of various flavors out of the concentrate supplied by M/s Parle Exports Ltd. The said concentrates were also called as Non Alcoholic Beverages Base (NABB). The Central Excise Officers visited the factory premises of M/s Parle Exports Ltd. who used to manufacture Non Alcoholic Beverages Base on 20.10.1993. The officers came to know that Non Alcoholic Beverages Base was supplied by M/s Parle Exports Ltd. to various franchise holders and the present appellants were franchise holders who used to procure NABB from M/s Parle Exports Ltd. and used to manufacture Aerated Drinks out of the same. The Central Excise Officers recorded certain statements of personnel working with M/s Parle Exports Ltd. and they came to know that each franchise holder like the appellants in the present case used to submit on monthly basis figures of sales of bottles of aerate drinks manufactured by them out of the NABB procured from M/s Parle Exports Ltd. The officers compared the figures reported

by the franchise holders like the present appellants, with the figures of manufacture of aerated water reflected in their respective Central Excise records like RG-1 and reported in RT-12 returns submitted to the Jurisdictional Range Superintendent. On the basis of such comparison they prepared chart year-wise of the difference in the quantity of sale reported by appellants to the supplier of NABB and that reflected in RT-12 and presumed that to the extent of difference the manufacture was under reported by the appellants in their RT-12 returns and under such presumption issued show cause notices to the appellants. M/s Varanasi Bottling Company Ltd. was issued a show cause notice dated 25.02.1994/29.02.1994 wherein in Para 18.2 it has been stated "the sales reported by the bottlers on weekly and monthly basis to M/s Parle Exports Ltd. appears to be actual sales effected by the bottlers in their franchise area" and also further stated that it appeared that sales reported by the bottlers and compiled by M/s Parle Exports Ltd. for the purpose of internal planning were the actual production and sales figures which should be the basis for decision of Central Excise Duty. It was further stated in Para 19.1 that sales figures taken from M/s Parle Exports Ltd. were compared with the figures of excisable goods i.e. soft drinks as reported in RG-1/monthly RT-12 returns filed by M/s Varanasi Bottling Company Ltd. to Jurisdictional Range Officers. Further, on the basis of such comparison carried out, it was alleged that the figures reflected in RT-12 were wrong and the figures reported to M/s Parle Exports Ltd were the correct figures of manufacture and Central Excuse Duty should have been paid by M/s Varanasi Bottling Company Ltd. on the basis of such figures. In Para 23 of the said show cause notice, there was an allegation of suppression and extended period was invoked and through said show cause notice and its corrigendum M/s Varanasi Bottling Company Ltd. were called upon to the show cause as to why the differential Central Excise Duty of Rs. 57,20,248/- should not be demanded from them for the period from February, 1989 to July 1993. On the basis of same investigation at the end of M/s Parle Exports Ltd. appellant-M/s Amrit Bottlers Pvt. Ltd were also issued with a show cause notice dated 25.02.1994 covering the period from 1988 to 1993 calling upon to show cause as to why differential Central Excise Duty of Rs. 58,92,247/- should not be demanded from them. Similarly a show cause notice dated 25.03.1994 was issued to appellant-M/s Brindavan Bottlers Ltd. covering the period from 1988 to 1993 demanding differential Central Excise Duty of Rs. 76,89,248/-. The other appellants namely Mr. C.P. Kejriwal, Mr. Rakesh Ladhani and Mr. M.D Ladhani were called upon to show cause as to why personal penalty under Rule 209 A of Central Excise Rules, 1944 should not be imposed on them. All the appellants contested the show cause notice. M/s Varanasi Bottling Company Ltd. has submitted before the Original Authority that there were instances where the figures reported in RT-12 were more than the figures reported as of production to M/s Parle Exports Ltd. and, therefore, the figures reported to M/s Parle Exports Ltd. cannot be the basis for determination of the quantity of goods manufacture by them. Similar submissions were also made by the other appellants however, the Original Authority did not appreciate the arguments and confirmed the demand. The show cause notice issued to M/s Varanasi Bottling Company Ltd was confirmed through Order-in-Original No. 27/PKJ/CCE/ADJN/2009 dated 30.07.2009 through which the demand of Rs. 57,20,248/- was confirmed and Shri C.P. Kejriwal was imposed with a fine of Rs. 5 lakhs under Ruled 209 A of Central Excise Rules, 1944. The show cause notice issued to M/s Amrit Bottler Pvt. Ltd. was decided through Order-in-Original No. 58/PKJ/CCE/ADJN/2009 dated 19.11.2009 wherein Central Excise Duty of Rs. 58,92,247/- was confirmed and Shri Rakesh Ladhani was imposed with a penalty of Rs. 5 lakhs under Rule 209 A of Central Excise Rules, 1944. The show cause notice dated 25.03.1994 issued to M/s Brindavan Bottlers Ltd. was adjudicated through Order-in-Original No. 01/CE/PKJ/CCE/ADJN/2010 dated 08.01.2010 through which Central Excise Duty demand of Rs. 76,89,248/- was confirmed and Shri M.D. Ladhani was with personal penalty of Rs. 5 lakhs under Rule 209 A of Central Excise Rules, 1944. Aggrieve by the said orders M/s

Varanasi Bottling Company Ltd., Shri C.P. Kejriwal, M/s Amrit Bottlers Pvt. Ltd., Shri Rakesh Ladhani, M/s Brindavan Bottlers Ltd. and Shri M.D. Ladhani have preferred appeals before this Tribunal.

3. Heard the learned counsel Shri Atul Gupta for M/s Varanasi Bottling Company and Shri C.P. Kejriwal and Shri Vineet Kumar Singh for the remaining appellants. Shri Atul Gupta has submitted that the appellants had submitted before the Original Authority that there were instances where the figures reported in RT-12 returns were higher than ~~there~~ those reported to M/s Parle Exports Ltd. and that due to such reasons the figures reported to M/s Parle Exports Ltd. cannot be the basis for demand of duty. He has further submitted that entire demand is based on presumption that the figures reported to M/s Parle Exports Ltd were correct and those reflected in RT-12 returns were wrong. He has further submitted that ~~on~~ the show cause notices issued on the basis of presumption cannot sustain and that there is no evidence of receipt of any raw material, manufacture, transportation and sales of the goods manufactured also Revenue has not submitted evidence in respect of any financial transactions in excess of the transactions reflected in the books of account. He has further relied on final order issued by this Tribunal in the case of Commissioner of Central Excise, Hyderabad v/s Annapurna Industries Ltd. reported at 2003 (153) ELT 586

(Trib. Bang.). He has further relied on final order issued by this Tribunal in the case of Goa Bottling Company Ltd. v/s Commissioner of Central Excise, Goa reported at 2001 (135) ELT 741 (Tri. Mum.). He has submitted that this Tribunal has held in the case of Goa Bottling Company Ltd. that the demand of duty arrived at only by applying the theoretical ratio of the quantity of beverages base and the quantity of beverage obtained from that base cannot sustain and that in the said case this Tribunal has also observed that there was no reason to believe that the reported sales figures really represented the actual figures of production. Learned counsel Shri Vineet Kumar Singh has submitted that the arguments put forth by learned counsel Shri Atul Gupta apply to the appeals represented by him.

4. Learned AR has supported the impugned Orders-in-Original. He has further submitted that the appellants had accepted the correctness of the figures submitted by them to M/s Parle Exports Ltd.

5. Having considered the rival contentions we find that the issue to be decided is whether figures available in the record of the supplier of NABB are more authentic as compared to the figures reported in RT-12 returns submitted to the Jurisdictional Range Superintendent. Period involved in the above stated show cause notices is from February, 1988 to July, 1993. During the said period each manufacturer

appellants would have submitted more than 50 monthly RT-12 to the Jurisdiction Range Superintendent. The responsibility of the Jurisdictional Range Superintendent was to assess the goods to Central Excise Duty and issue the assessment memorandum in respect of each RT-12. In those circumstances we find that it ~~may~~ is not sustainable to hold that the appellants under reported the figures in the returns filed before the Range Superintendent and, therefore, we find that the figures of the production available on the record of the supplier of NABB cannot be more authentic than the figures reflected in Statutory record like RG-1 and reported in Statutory returns like RT-12. Further, as argued by the learned counsel for the appellants that Revenue could not produce any evidence of procurement of all the raw materials for manufacture of the alleged quantity, clearance of alleged quantity, transportation of the same and receipt of monetary transactions of the same. We, therefore, find that all show cause notices dealt with in these appeals are totally presumptive in nature and, therefore, they are not sustainable. We, therefore, set aside all the impugned Orders-in-Original and allow all the appeals. The appellants shall be entitled for consequential relief as per law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Anil

प्रमाणित प्रति/Certified True Copy
08\09\17
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