

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Excise Cross Application No. 60048 of 2017
In
Excise Appeal No. 60544 of 2016**

[Arising out of Order-in-Appeal No. 246-247/CE/Appeal-II/Delhi/2016 dated 22.08.2016 passed by the Commissioner (Appeals-II), Central Excise, Delhi]

Commissioner of Central Goods & Service Tax, Faridabad Appellant
GST Bhawan, New CGO Complex, NH-IV, Faridabad,
Haryana 121001

VERSUS

M/s Varun Beverages Ltd Respondent
Village Tajpur Ujina, Nuh Hodal Road,
Post Ujina, The. Nuh, Dist. Mewat,
Haryana 122107

APPEARANCE:

Ms. Amita Gupta, Authorized Representative for the Appellant
Shri Bimal Jain, Advocate for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER NO. 60148/2026

DATE OF HEARING:12.02.2026
DATE OF DECISION:12.02.2026

S.S.GARG:

The present appeal has been filed by the Revenue against the impugned order in appeal dated 22.08.2016, whereby, the learned Commissioner has classified the impugned goods i.e. Nimbooz Masala Soda under tariff item number 22021020.

2. Briefly the facts of the present case are that the appellant is engaged in manufacturing of Non-Sweetend aerated water & fruit juice drink falling under Chapter Heading No. 22029020 of the Central Excise Tariff Act, 1985. The respondent filed refund claims with the Divisional office on identical grounds for refund of amount deposited under protest on clearance of fruit juice namely 'Nimbooz Masala Soda'. Since, the refund claims were not found tenable, show cause notices were issued to the respondent asking them to explain as to why the claims should not be rejected. The respondent filed the reply to the show cause notice and claimed that Nimbooz Masala Soda is a fruit juice based drink is made up of 5% real juice. It is lemon juice based drink with added carbonation and masala to enhance taste and is made of real lemon juice classifiable under chapter 22029020 and chargeable to duty @ 2% (without CENVAT) or 6% (with CENVAT) as the case may be. The said show cause notices dated 01.12.2014, 02.12.2014, 31.08.2015 and 27.10.2015 were adjudicated by the Assistant Commissioner, Gurgaon vide Order dated 30.10.2015 and all the refund claims were rejected under section 11B of the Central Excise Act, 1944. Aggrieved by the said order, the respondent filed the appeal before the Commissioner (Appeals) against the rejection of the refund claim and learned Commissioner (Appeals) returned back the matter to the Adjudicating Authority with direction to get the NMS examined in the lab of the Food Safety and Standards Authority of India and decide the matter in the light of verification report. Aggrieved by the said order, the Revenue has filed the present appeal.

3. Heard both the parties and perused the material on record.
4. Learned authorized representative for the revenue submits that the impugned order is not sustainable in law in terms of Section 35A of the Central Excise Act, 1944 which mandates the Commissioner (Appeals) can, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. She further submits that the learned Commissioner is not mandated to remand back a case to the Original Authority for de-novo proceedings. She further submits that NMS satisfied all the ingredients and is required to be classified under tariff heading 22021020.
5. On the other hand, learned counsel for the respondent submits that this issue is no more *res integra* and the Larger Bench of the Tribunal in the appellant's own case and the Division Bench of Allahabad in the appellant's own case by following the Larger Bench has held that the goods under dispute are classifiable under tariff item number 22029020 which is for category of fruit pulp or fruit juice based drinks. The learned Counsel for the appellant in support of his submissions has relied upon the following decisions:

- ***M/s Brindavan Beverages Private Limited & Ors. Vs. commissioner of Customs & Ors. [2019 (29) G.S.T.L. 418 (Tri.-LB)]***

- ***M/s Varun Beverages Ltd. & Anr. Vs. the Commissioner of Central Goods and Service Tax [Excise appeal No. 51712 of 2018 dated 18.06.2019].***
- ***M/s Brindavan Beverages Private Ltd; M/s Varun Beverages Ltd. & Ors. Vs. Commissioner of Customs & Ors. [Excise Appeal No. 50661 & Ors. Of 2015 & 2018 dated 15.07.2019]***
- ***M/s Pepsico India Holdings Pvt. Ltd. Vs. Commissioner of Central Excise, Puducherry [Appeal No. E/41318 of 2015-DB]***
- ***Commissioner of Central Goods & Service Tax and Central Excise, Greater Noida Vs. M/s Varun Beverages Ltd. [Diary No. 23432/2020 dated 22.01.2021]***
- ***M/s Varun Beverages Limited Vs. Commissioner of Central Excise, Noida-II [Excise Appeal No. 70059 of 2017 dated 23.09.2021]***
- ***M/s Varun Beverages Limited Vs. Commissioner, Central Excise, Greater Noida [Excise Appeal No. 52835 of 2015 dated 10.11.2021]***
- ***Order-in-Original No. 01/CE/Varun Beverages Ltd/Refund/Div.IV/AC/2023 dated 22.06.2023.***

6. We have heard both the parties perused the various decisions relied upon by the respondent in their own case and other cases and after going through the decisions relied upon by the respondent (cited Supra), we are of the view that the classification of NMS is no

longer open to dispute. It is the consistent and uniform view rendered by CESTAT across various Benches including the authoritative pronouncement of the Larger Bench of the CESTAT and repeatedly followed in the respondents own cases across different Benches of CESTAT (cited supra) which unequivocally established that NMS is classifiable under Chapter heading 22029020 of the first schedule of the Central Excise Tariff as a fruit pulp or fruit juice based drink.

7. We also note that the Revenue's Appeal in the appellant's own case before the Hon'ble Apex Court was dismissed and even the Department authorities adhering to the principle of discipline has accepted the settled classification and granted consequent relief including the refund. By following the ratio of the decisions of Larger Bench of the Tribunal (cited supra), we are of the considered view that there is no infirmity in the impugned order and therefore, we uphold the same by dismissing the appeal of the Revenue. The cross objection also stands disposed of accordingly.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)