

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

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60146 of 2021

(Arising out of Order-in-Appeal No. JNK-EXCUS-APP/150-157/20-21 dated 25.02.2021 passed by the Commissioner (Appeals), Jammu)

M/s Pearl Drinks Limited

(Phase I Industrial Complex Bari Brahmana Jammu,
Jammu Kashmir 181133)

.....Appellant

VERSUS

C.G. & S.T. Jammu

(OB-32, Rail Head Complex, Bahu Plaza, Jammu,
Jammu & Kashmir 180012)

.....Respondent

WITH

Excise Appeal No. 60147 of 2021

(Arising out of Order-in-Appeal No. JNK-EXCUS-APP/150-157/20-21 dated 25.02.2021 passed by the Commissioner (Appeals), Jammu)

M/s Pearl Drinks Limited

(Phase I Industrial Complex Bari Brahmana Jammu,
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.....Appellant

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(OB-32, Rail Head Complex, Bahu Plaza, Jammu,
Jammu & Kashmir 180012)

.....Respondent

APPEARANCE:

Ms. Kiran Doipohode, Advocate for the Appellant

Ms. Geetika, Authorised Representative for the Respondent

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 60957-60958 of 2021

DATE OF HEARING: 24.11.2021

DATE OF DECISION: 24.11.2021

PER ASHOK JINDAL:

The appellant is in appeal against the impugned orders wherein the refund claim filed under Notification No. 1/10 dated 06.02.2010 was denied.

(a) On account that duty has been paid excess, therefore they are not entitled to take excess claim of refund of excess duty paid.

(b) The freight has not been included in the assessable value of the goods, therefore, they are not entitled to claim refund claim thereon.

2. The Ld. Counsel for the appellant submits that at the time of the clearance they were paying duty but in the impugned period certain goods were returned from the buyers on which they have paid the duty which has been cleared on payment of duty, as they have cleared the goods and paid duty at the time of clearance, therefore they have not paid any excess duty and they have claimed refund of the actual duty paid by them in cash. She also submitted that they are entitled for the refund claim as held by this Tribunal in the case of ***Shree Nath Industries Vs. Commissioner of Central Excise, Jammu*** reported in **2018 (364) E.L.T. 904 (Tri.-Chandigarh)**.

3. Further, she also submitted that the freight has not been included in the assessable value. To support this contention they have filed certain sample invoices and submits that as per the decision of this Tribunal in the case ***Uflex Ltd Vs. CCE, Jammu reported in 2015 (327) ELT 359 (Tri.- Del)***, therefore, they are entitled to claim refund of duty paid on transportation charges.

4. On the other hand, Ld. AR opposed the contention of the Id. Counsel and submits that as the goods have been returned to the appellant and they have taken the Cenvat credit thereon, it is not clear from the records that whether any process has been taken on goods and they have been cleared on payment of duty. It is a fact that when they have taken the credit excess payment of duty, therefore, they are not entitled to claim refund of excess duty paid in cash. She further submits that with regards to transportation charges the appellant has submitted only sample invoices and require records for verification, in these circumstances, the matter is remanded back to adjudicating authority for verification.

5. Heard the parties and considered the submissions.

(a) With regard to the issue refund of duty paid in cash:-

it is a fact on record that at the time of clearance of goods, the appellant paid duty and claim refund thereof only, there is a Cenvat credit relying in Cenvat credit account unutilized due to return of goods already cleared by the appellant on payment duty. In these

circumstances, I hold that the appellant is entitled for refund of duty paid in cash at the time of clearance of goods as held by this Tribunal in the case of **Shree Nath Industries Vs. Commissioner of Central Excise, Jammu**, (Supra) wherein this Tribunal has observed as under:

" 5. We find that in terms of Notification No. 56/2002-C.E., dated 14-11-2002, the assessee is required to pay duty after adjusting the Cenvat credit in cash and whatever duty paid in cash is entitled to self-credit/refund to the assessee. The case of the Revenue is that as they have not availed the Cenvat credit and they have paid excess duty against actual duty payable by them. Therefore, the excess credit was taken by the appellant is not entitled for refund.

6. We take further note of the fact that the appellant has taken self credit, if only of duty paid in cash and Notification No. 56/2002-CE dated 14-11-2002, states that wherein whatever duty has been paid in cash is refundable. Admittedly, the appellant has not claimed refund of Cenvat credit available to them. In that circumstances, it is revenue neutral situation, therefore, there was no requirement to issue show cause notice to the appellant. We further taken not of the fact that the demand has been raised against the appellant under Section 11A of the Central Excise Act, 1944. As per the said provision, if the appellant has not paid duty/short paid duty/erroneously refunded of duty is recoverable. In this case, it is the case of the Revenue itself that they were not required to pay duty, therefore, the excess amount paid by the appellant is merely a deposit not a duty. Hence, the provisions of section 11A of the Act, is not applicable to the case. In that circumstances, the appellant is not required to pay the excess refund claimed by them."

5. Refund of duty paid on transportation charges as the appellant is produced only of the sample invoices, but I find that it is a fact on record that appellant has submitted invoices before the adjudicating authority as well as with the Commissioner (Appeals), in these

circumstances, it is not required further re-examination. Further it is a claim of the appellant that they have not included the transportation charges in the assessable value which is evident from the invoices placed before me, in these circumstances, I hold appellant is entitled to claim refund of duty paid on service tax paid on transportation charges.

6. In view of this, the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)