

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

E/600/2007

(Arising out of Order-in-Appeal No.38/2007 (M-IV) dated 19.4.2007 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Hindustan Coca Cola Beverages P. Ltd. Appellant

Vs.

CCE, Chennai – IV

Respondent

Appearance

Shri T. Ramesh, Advocate for the Appellant
Shri K. Veerabhadra Reddy, JC (AR) for the Respondent

CORAM

Hon'ble Shri D.N. Panda, Judicial Member

Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Heard on : **09.02.2017**

Pronounced on : **24.03.2017**

Final Order No. 40535/2017

Per D.N. Panda

1. While the allegation in the show cause notice was that Maaza Orange and Maaza Pineapple drinks were fruit concentrate based drinks and classifiable under chapter heading number 2202.91 (or) 2202.99 as per Board's Circular no.309/25/97-Cx dt.31-3-97, appellant's defence plea was that the base for manufacturing the beverage (drinks) i.e., Maaza orange and Maaza Pineapple drink is the fruit juice and not fruit concentrate. Other



ingredients only contribute to the taste/preservation of the drinks but do not form base for such drinks.

1.2 Revenue alleged that Maaza Orange juice was received by appellant from its Bangalore Unit on stock transfer basis and using such juice, it had manufactured Maaza Orange and cleared the same without payment of excise duty claiming exemption under Notification No.3/2001 dated 1.3.2001 and Notification No.6/2002 dated 1.3.2002 as fruit juice based drinks. Appellant had also informed the Authority below that it was importing Authentic Aseptic Orange juice concentrate and Authentic Aseptic Pine Apple Concentrate as well as Orange fruit juice and pine apple fruit juice extract for manufacture of Maaza Orange drink and Maaza Pineapple drink respectively.

1.3 Revenue Authority was of the view that although Orange fruit juice or Pineapple fruit juice were added to make aforesaid drinks the imported Authentic Aseptic Orange juice concentrate and Authentic Aseptic Pine Apple Concentrate were used in the manufacture of Maaza Orange Drink and Maaza Pine Apple drink. According to the Authority below, the Board Circular required that impugned products should be classified under sub-heading 2202.91 (or) 2202.99 for the reason that **the term "fruit pulp based drinks" would not include fruit juice or fruit juice concentrate based drinks. The fruit juice or fruit juice concentrate based drinks will appropriately be covered under chapter heading No.2202.91 (or) 2202.99, as the case may be.**



1.4 In the course of enquiry from the stores record and excise record of the Appellant it was found by the Authority below that appellant had received only Orange juice from Bangalore Unit on stock transfer basis, but recorded that as orange pulp. Such fact was corroborated from the statement of **Shri.M. Varadarajan, Associate Manager** of the appellant. By a letter dated 25-7-2002, addressed to the Range officer, appellant had admitted that they classified the goods as fruit pulp or fruit juice based drink to avail the benefit of exemption Notification illegally and had suppressed such facts to the department. In terms of the said letter, appellant informed that it was manufacturer of fruit juice based drinks with the brand name of Maaza and such drinks were Maaza Orange and Maaza Pineapple.

2. On the above fact and circumstances, learned Adjudicating Authority held that appellant was liable to pay excise duty of **Rs.3,76,561/-** in terms of Rule 4, 6, and 8 of Central Excise Rules, 2001 and 2002, as the case may be, read with proviso to section 11A(1) of Central Excise act, 1944. So also holding that the appellant having contravened the provisions of Rules 4, 6 and 8 of Central Excise Rules, 1944, and also suppressed the fact of use of concentrates in the manufacture of the drinks and mis-classified the impugned goods, penalty under section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002 to the extent of equal amount of duty demandable was imposed interest was payable under Section 11AB of Central Excise, 1944. Further,

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penalty of Rs.1000/- (Rupees Ten thousand only) was imposed under Rule 25 of Central Excise Rules, 2002.

3. Appellant submitted that it cleared the drinks manufactured by it classifying the same under the Tariff Heading 2202.40, availing duty exemption under Notification No.3/2001-CE dated 01.03.2001 and 6/2002-CE dated 01.03.2002 for the period from August 2001 to March 2002 without payment of duty. However Revenue classified the said goods under Tariff Heading 2202.99. Appellant pleaded that classification adopted by Revenue is baseless since that was based on a redundant Circular No. 309/25/97-CX dated 21.3.1997. No duty was at all payable since notification grants duty exemption benefit to the drinks manufactured by the appellant using fruit pulp and fruit juice. According to the appellant, juice concentrate is nothing but the juice and the beverage manufactured by appellant is only juice based drink subscribing to the Tariff Heading 2202.40.

4. Appellant's further submission is that the Tariff Heading 2202.99 covers the goods which is water including mineral water and aerated water containing sugar and other sweetening matter or flavoured. Whereas the Tariff Heading 2202.40 deals with fruit pulp or fruit juice based drinks. The goods in question manufactured by the appellant were using fruit pulp as well as fruit juice. That shall not be aerated water added with sugar or sweetening matter and flavoured as required by Tariff Heading 2202.99. Appellant also says that when the HSN Notes are read that gives a clear understanding that the appellant's goods were not at all aerated water with sugar

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and sweetening matter but were fruit pulp and fruit juice drinks. The nature of the goods manufactured by the appellant was known to the Department for which the adjudication suffers from bar of limitation.

5. Revenue on the other hand says that the goods were found to have been manufactured using the imported concentrates and both concentrate having been used as per the statement of the Assistant Manager, Shri Varadharajan, as has been recorded by the adjudicating authority in para 6.2 of the order, the goods subscribe to the Tariff Heading 2202.99. Shri Varadharajan stated that Maaza Orange and Maaza Pineapple were manufactured out of fruit juice concentrate. He also admitted that the appellant had manufactured Maaza Pineapple and Maaza Orange out of the pure authentic aseptic pine apple and pure aseptic orange concentrate. But they had classified the goods as fruit pulp or fruit juice based drink to avail exemption. The adjudicating authority rightly classified the goods and for the deliberate intention of the appellant claiming exemption of duty on the goods manufactured, the extended period was invocable. Duty was accordingly levied and penalty was imposed.

6. Heard both sides and perused the records.

7. Record reveals that both sides are on controversy on the nature of the input used for manufacture of Maaza Orange and Maaza Pineapple softdrinks. In the course of investigation on 9.4.2002, the team found that the appellant had imported pure and authentic aseptic pineapple concentrate in terms of Bill of Entry No.



253315 dated 2.8.2011 and pure authentic aseptic orange concentrate was imported vide Bill of Entry No. 253402 dated 3.8.2011. These goods were classified under CTH 3302.10. The consignment came from Hong Kong. Investigation reported that pineapple concentrate and orange concentrate were used to manufacture Maaza Orange and Maaza Pineapple drinks. Added to that, when the statement was recorded on 8.10.2002 from Shri Varadharajan, Assistant Manager, he stated that the appellant had claimed the exemption of the drinks under Notification No. 3/2001 and 6/2002 claiming that they have been manufacturing the same out of fruit juice and fruit concentrate. He also explained that Maaza Orange is manufactured using the ingredients namely treated water, sugar, Maaza Orange concentrate and orange fruit (juice extract). Similarly, Maaza Pineapple drink is manufactured using the inputs namely treated water, sugar, Maaza Pineapple concentrate and pineapple fruit juice extract. He further stated that the Maaza Orange and Maaza Pineapple drinks were made out of pure authentic aseptic pineapple and orange fruit juice concentrate. The import of an authentic aseptic pineapple concentrate and orange concentrate was not disclosed to the department. The use of the above ingredients in the manufacture of the drinks was not controverted in the adjudication. Nor that was controverted before Tribunal. Appellant established that without need of the above concentrates, no one shall import. Therefore that fact alone is enough to hold that concentrates were indispensable for use in manufacture of drink by the appellant.

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8. The appellant failed to show purchase of fruit pulp or fruit juice to use the same in the manufacture of drinks. There is a finding by the learned adjudicating authority in para 4.9 of his order that the master mixture used contained authentic aseptic orange juice concentrate and authentic aseptic pineapple concentrate. So also there was orange fruit juice and pineapple fruit juice used in the manufacture of the drinks.

9. Now the question arises is when the imported authentic aseptic concentrate of both kinds were used in the manufacture of the drink and the Tariff Heading 2202.40 requires that the aerated water made out of fruit pulp or fruit juice shall only subscribe to that class, the appellant is entitled to classify its goods under that Tariff Heading. The case of the appellant being admittedly manufacture of the aerated water, (soft drink) with the basis of the concentrates imported and without demonstrating that the base was fruit pulp or fruit juice, it is bound to be classified under the Tariff Heading 2209.99. Had the appellant brought out a clear test report subjecting the goods to chemical test to rule out the allegation of Revenue that the same falls under Tariff Heading 2202.99, it could have a case to fall under tariff heading 2202.40. There was no fruit pulp or fruit juice used in the manufacture of drinks in absence of any purchase record produced before any of the Authority to prove purchase of fruit pulp or fruit juice was made by appellant for that purpose. Accordingly, the appellant is disentitled to the benefit of the exemption notification having subscribed its goods to Tariff Heading 2202.99.



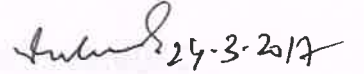
10. The test for determining classification of the goods under Tariff Heading 2202.40 is that the basis of the drink ought to be fruit pulp or fruit juice. The appellant having used the concentrate imported to manufacture its drinks and was deliberately classifying the same under a wrong entry, failed to meet the condition of the notification. Accordingly appeal fails. Therefore the adjudication cannot be said to be barred by limitation. It was a case of suppression of material fact deliberately causing evasion. When Revenue discharged its onus of proof bringing out the evidence discussed aforesaid and Appellant failed to discharge its burden of proof to prove that the base of the drink manufactured was fruit pulp or fruit juice, the possible inference that can be drawn is that the claim of the appellant was baseless without any evidence.

11. In the result, appeal is dismissed.

(Pronounced in the open court 24.03.2017)



(MADHU MOHAN DAMODHAR)
Technical Member

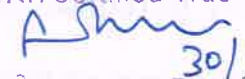


(D.N. PANDA)
Judicial Member

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