

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Excise Appeal No. 41659 of 2018

(Arising out of Order-in-Appeal No.CBE-CEX-000-APP-114-2018 dated 28.03.2018 passed by Commissioner of GST & Central Excise (Appeals), 6/7, ATD Street, Race Course Road, Coimbatore 641 018)

**M/s.South India Bottling Company
Private Ltd.**

.... Appellant

SIPCOT Industrial Growth Centre,
Gangaikondan Village,
Tirunelveli 627 004.

VERSUS

**The Commissioner of GST &
Central Excise**

... Respondent

6/7, A.T.D. Street, Race Course Road,
Coimbatore 641 018.

APPEARANCE :

Shri N.K. Bharath Kumar, Chartered Accountant
for the Appellant

Smt. G. Krupa, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.40904/2026

DATE OF HEARING : 11.03.2026

DATE OF DECISION : 22.07.2026

Per: Shri P. Dinesha

By this Appeal, the taxpayer is questioning the classification disputed by the Revenue; for sake of brevity, we rely on the undisputed factual matrix as captured in the impugned Order-in-Appeal.

2. The brief facts of the case noticeable from the Order-in-Appeal are that the Appellant, a contract packaging company (franchisee bottler) to Coca Cola company, manufactured and cleared a produce named 'Minute Maid Nimbu Fresh' (MMNF, for short) under Central Excise Chapter Heading 22029020 of the First Schedule to the Central Excise Act, 1985 as 'Fruit pulp' or 'Fruit juice based drink'. The officers of DGCEI investigated the classification of 'Minute Maid Nimbu Fresh' and alleged that 'Minute Maid Nimbu Fresh' merited classification under Central Excise Tariff Heading 22021020 as 'Lemonade'; that as a consequence, the abatement claimed by the Appellant under Section 4A of the Central Excise Act, 1944 would not be available to them; that they should pay Excise duty on Section 4 value and that the

differential duty of Rs.19,04,433/- was demandable from them from 01.04.2011 to 14.07.2014. It is recorded that as the Appellant failed to pay appropriate Excise duty, a Show Cause Notice No.61/2015 dated 08.09.2015 was issued to the Appellant for demand of Central Excise duty on the above lines. The Adjudicating Authority after due process *vide* Order-in-Original No.04/AC/CE/2017 dated 23.03.2017 confirmed the demand of Central Excise Duty of Rs.19,04,233/- for the raid period along with interest and imposed penalty under Section 11AC of the Central Excise Act, 1944. Aggrieved by the order of the Adjudicating Authority (*supra*), the Appellant preferred an Appeal before the First Appellate Authority and the First Appellate Authority having rejected the Appeal thereby upholding the Order-in-Original *vide* impugned Order-in-Appeal No.114/2018 dt. 28.03.2018, the present Appeal has been filed by Appellant before us.

3. From the above, the scope of dispute between the Taxpayer and the Department is with regard to the classification of 'MMNF'. The view of the Department is that the item in question is 'lemonade', against which, the tax player declared the same as 'Fruit pulp' or 'Fruit juice

based drink'. In the impugned order, the Commissioner (Appeals) has followed the decision of Mumbai Bench in the case of **Hindustan Coca-Cola Beverages Pvt. Ltd. Vs CGST Bhiwandi** [(2024) 16 Centax 478 (Tri.-Mum.)] and hence, dismissed the Appeal on merits. The First Appellate Authority has also relied on the decision of Hon'ble Supreme Court in **Jaishri Engineering Company (P) Limited Vs CCE** [1989 (40) ELT 214 (SC)] and Tribunal decision in **CCE Pune Vs Thermax (P) Limited** [1994 (70) ELT 247 (Tribunal)] and few other Tribunal decisions to reject the contention of the Appellant that the extended period of limitation was invoked without any justification.

4. We have heard Shri N.K. Bharath Kumar, Id. Chartered Accountant for the Taxpayer-Appellant and Smt. G.Krupa learned Departmental Representative defended the impugned order; we have carefully considered rival contentions, documents placed on record, written submissions and the judicial decisions relied upon. Upon hearing both the parties, we find that the only issue that arises for our consideration is, 'whether the Revenue

was right in disturbing the declared classification of 'MMNF' under CETH 22029020 ?'

5. Learned Chartered Accountant submitted, at the outset, that the issue on merits is no more *res integra* as the very same issue has been decided by the Larger Bench of the Tribunal in the case of **Brindavan Beverages Pvt. Ltd. Vs Commissioner of Customs** [2019 (29) GSTL 418 (Tri.-LB)] [in Excise Appeal No.50661 of 2015, etc.), which decision has been followed by all the Benches of the Tribunal. He would also refer to the following decisions/orders of various Benches in support:

- (i) **Hindustan Coca-Cola Beverages (P) Ltd. Vs CCE&ST Noida** *vide* Final Order No.71423/2019 dated 19.07.2019 [Excise Appeal No.71015 of 2018]
- (ii) **Hindustan Coca-Cola Beverages (P) Ltd. Vs CCE&ST Bengaluru** *vide* Final Order Nos. 21107-21108/2025 dated 24.07.2025 [Excise Appeal Nos.20866,20867 of 2016]
- (iii) **CC (Import), JNCH, Mumbai Vs Narang Hospitality Services Pvt. Ltd.** [2014 (307) ELT 801 (Tri.-Mumbai)]
- (iv) **Pepsico India Holdings (P) Ltd. Vs CCE** [2020] 116 taxmann. Com 8 (Chennai-CESTAT)

(v) **The Commissioner of Sales Tax Vs Neulife Nutrition System** [2016-VIL-233-Bom.]

6. *Per contra*, Smt. Krupa, Id. Departmental Representative supported the findings of the impugned order.

7. After going through the decision of the Larger Bench (*supra*) which has been followed by various Benches of the Tribunal, we find that the assertion of the Id. Chartered Accountant to be true as the ratio in question has been laid to rest by the Larger Bench. Relevant Paras of the Tribunal's Mumbai Bench in the case of **Hindustan Coca-Cola Beverages Pvt. Ltd.** (*supra*) which followed the Larger Bench decision are extracted as under :

5.2 We find that the issue involved in the present case is covered by the decision of the Larger Bench in the case of Brindavan Beverages Pvt. Ltd. [2019 (29) GSTL 418 (Tri.-LB)]. Taking note of the difference in the opinions, following issue was taken up for consideration by the Larger Bench:-

"21. The Division Bench of the Tribunal at Mumbai in Hindustan Coca Cola Beverages held that the product MMNF is classifiable under Tariff Item No. 2202 10 20 and did not agree with the contention of the appellant that MMNF is not a flavoured drink. It observed that the decision of the Tribunal in the case of Commissioner of Central Excise, Bhopal v. Parle Agro Pvt. Ltd. - 2008 (226) E.L.T. 194 (Tri. - Del.) classifying "Appy Fizz" as a fruit juice based drink under Tariff Item No. 2202 90 20 would not help the appellant because Appy Fizz contains a far

more higher and significant percentage of apple which is 23%, whereas in the case of MMNF, the juice concentrate is admittedly only 1%. Reliance placed by the appellant on the provisions of Food Adulteration Rules to contend that since the Total Soluble Solid was not less than 10% and the lemon juice content was also not less than 5%, it should be treated as a “fruit based drink” was not accepted for the reason that the labels indicated that the brix content was 5.7% and the Lemon juice concentrate was only 1%.

22. Another Division Bench for the Tribunal at Allahabad, while hearing the Appeal filed by Brindavan Beverages found itself unable to agree with the reasoning given by the Mumbai Tribunal in Hindustan Coca Cola Beverages. The Bench noticed the Tariff Item No. 2202 10 with a single dash was divided into three categories, including lemonade with Tariff Item No. 2202 10 20, while Tariff Item No. 2202 90 with single dash had four categories including Fruit Pulp or Fruit Juice based drinks with Tariff Item No. 2202 90 20. Thus comparison of the two Tariff Items falling under two separate single dash groups cannot be made for classification. In the first instance, six digit classification has to be arrived at and then it has to be proceeded by arriving at eight digit classification. This process was not adopted by the Mumbai Tribunal in Hindustan Coca Cola Beverages and, therefore, it expressed its disagreement. According to the Bench, the product in question was lemon juice based drinks and, therefore, would fall under Tariff Item No. 2202 90 20.”

5.3 The decision referred by the Commissioner (Appeals) in the order has not been agreed by the Larger Bench and the Larger Bench has answered the reference made, as follows:-

“64. The fruit juice content of lime or lemon juice in MMNF, Nimbu Masala Soda or Nimbooz has been indicated to be not less than 5% and the Total Soluble solids is also not less than 10%. All the three products namely MMNF, Nimbu Masala Soda and Nimbooz, satisfy the requirements of Regulation 2.3.10 or Regulation 2.3.30. These products, therefore, would classify under Tariff Item no. 2202 90 20 as fruit juice based drinks. The Mumbai Tribunal in Hindustan Coca Cola was, not justified in holding that the Regulations are not required to be examined.

65. The irresistible conclusion, therefore, that follows from both the common parlance test and the supporting legislation test is, therefore, that the three products MMNF, Nimbu Masala Soda and Nimbooz would classify under Tariff Item No. 2202 90 20 as fruit juice based drinks.

66. It can however be urged that even when lemon or lime juice is added to water as a flavoring agent, the product can still be called lemonade. Though it has to be seen whether the product is essentially waters with added flavour or whether lemon juice is the basis of the fruit drink, but the answer also lies in the definition of —non carbonated ready to serve fruit beverages|| under Regulation 2.3.10 and —carbonated fruit beverages and fruit drinks|| under Regulation 2.3.30. It would follow from these Regulations that even when lime juice is added but the fruit content of lime or lemon juice is not less than 5%, the product would be classified as fruit juice based drinks but if the lime or lemon juice content is less than 5%, then it would classify as lemonade.

67. Accordingly, the reference is answered as follows:

The product "Minute Maid Nimbu Fresh (hereinafter referred to as MMNF) manufactured by Brindavan Beverages Private Limited, and 7up —Nimbooz Masala Soda|| or 7up —Nimbooz|| manufactured by Pepsico India Holdings Private Limited are classifiable under Tariff Item 2202 90 20 of the Central Excise Tariff Schedule under the category of —fruit pulp or fruit juice based drinks".

5.4 Further, by final order No. 71374-71377/2019 dated 15.07.2019, the Tribunal has followed the Larger Bench and observed as follows:-

"5. In view of the conclusions given by the Larger Bench, it has to be held that the demands raised in all the above stated appeals confirmed by Original Authority holding the said beverages to be falling under Tariff Item No.22021020 are not sustainable.

6. We, therefore, allow all the appeals by setting aside the impugned orders except for the part of the Order-in-Original dated 28 October, 2014 in respect of M/s Brindavan Beverages Pvt. Ltd. where by cenvat credit to the tune of Rs.1,16,099/- already paid by the appellant was appropriated."

6.1 Respectfully following the decision and the consensus arrived at by the Larger Bench, we allow these three appeals filed by the appellant."

8. Following the ratio laid down in the above order, we are of the view that the classification attempted by the Revenue under CETH 22021020 by describing the item in question as 'Lemonade' is not sustainable; the declaration of classification under CETH 22029020 as made by the taxpayer is in order.

9. In view of above, the impugned order cannot sustain and hence, the same is set aside and the Appeal stands allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 22.07.2026)

sd/-

(M. AJIT KUMAR)
Member (Technical)

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sd/-

(P. DINESHA)
Member (Judicial)