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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3983/2006 Date 01/04/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E.BHOPAL

48, ADMINISTRATIVE AREA, AREA HILLS,
HOSHANGABAD ROAD, BHOPAL.

C.C.E.BHOPAL Appellant

Vs

M/S PARLE AGRO PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 114/08-EX** 0 Excise dated 18-3-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent

M/S PARLE AGRO PVT LTD
44-46, NEW INDUSTRIAL AREA, MANDIDEEP DISTT-RAISEN(MP)

2. Adv. / Consult SH. BALBIR SINGH, SH. H.G. DHARMADHIKARI, ADV., L/P RESPONDENT

3. ~~S~~D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 3983 of 2006

(Arising out of Order-in-Appeal No. 208-CE/BPL/2006 dated 10.10.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

1.	**Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?**	no
2.	**Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?**	no
3.	**Whether their Lordships wish to see the fair copy of the order?**	yes
4.	**Whether order is to be circulated to the Departmental authorities.**	N

CCE, Bhopal — Appellant

Vs.

M/s Parle Agro Pvt. Ltd. — Respondent

Appearance:
Shri Deepak Garg, SDR - For appellant
Shri Balbir Singh, Shri H.G. Dharmadhikari, Advocates - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 18.3.08

Final Order No. 114/08-EX dated 18-3-08

Per S.S. Kang:

The Revenue filed this appeal against the order passed by the Commissioner (Appeals) whereby Commissioner (Appeals) held that product Appy Fizz is classifiable under sub heading No. 22029020 of Central Excise Tariff on the ground that the product is fruit juice based drink.

2. The Revenue challenged the order on the ground that the same is classifiable under sub-heading No. 22021010 of Central Excise Tariff as aerated water.

3. The contention of the Revenue is that the Commissioner (Appeals) has ignored the chemical examiner's report and Ministry of Food and Processing Industries' opinion and which was on record and held in favour of the respondents. The contention of the Revenue is that since the product, in question, is aerated, therefore, is classifiable as flavoured aerated water. The Revenue also relied upon the HSN Explanatory notes in support of their claim.

4. The contention of the respondent is that as per the certificate given by Ministry of Food and Processing Industries, New Delhi, the product in question contains 23% of apple juice.

As the product in question is juice based drink, therefore, rightly classifiable under sub-heading No. 22029020 of the Tariff. The respondents also relied upon the chemical examiner's report to submit that there are 13.7% by weight are soluble solids in the product. The respondent also relied upon the text to Prevention of Food Adulteration Rules 1955 to submit that fruit beverage or fruit drink must contain total soluble solids not less than10%.

5. For ready reference relevant sub-heading is reproduced below :-

2202	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of Heading 2009.
2202 10	*Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured:*
2202 10 10	Aerated waters
9902 10 20	Lemonade
2202 10 90	Other:

2202 90	*Other:*
2202 90 10	Soya milk drinks, whether or not sweetened or flavoured
2202 90 20	Fruit pulp or fruit juice based drinks
2202 90 30	Beverages containing milk
2202 90 90	Other

6. The Revenue relied upon HSN Explanatory Notes of Chapter 22, we find that our tariff is not fully ~~allowed~~ aligned with the HSN Explanatory Notes. In the HSN Explanatory Notices there are two sub-headings under Heading No. 2202 one is water including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured and second is in respect of others. Whereas in Central Excise Tariff under Sub-heading No. 2202 there are specific headings in respect of soya milk, drinks etc. As per the Central Excise Tariff, the waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured are classifiable under sub-heading No. 2202.10. The drinks based on fruit juice

are specifically classifiable under Heading No. 22029020 of the Tariff. In the present case, there is no dispute regarding the contents of the product. Revenue is not disputing the certificate given by the Ministry of Food and Processing Industries, New Delhi rather they are relying it on the ground of appeal, as per the certificate, the product in question contains 23% of apple juice. therefore, we find no infirmity in the impugned order. The appeal is dismissed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM