

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

Appeal No. E/459 /2006-460 /2006-SM[BR]

Date 10/01/2008

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

To :
M/S HINDUSTAN COCA COLA BEVERAGES P LTD.
ENKAY TOWERS, UDYOG VIHAR V, GURGAON,
HARYANA
122016

M/S HINDUSTAN COCA COLA BEVERAGES P LTD.

Appellant
Vs
Respondent

CCE,MORADABAD.

I am directed to transmit herewith a certified copy of Final order No. 44-45/2008-SM[BR] dated 5.12.2007
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
CCE,MORADABAD.
KOTWALI ROAD, NAJIBABAD
2. Adv. / Consult SHRI. S. RADHAKRISHNAN, LEGAL COUNSEL TAXATION
C/O APPELLANT---
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 Publications (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
(SM Appeal Branch)

1 M/S HINDUSTAN COCA COLA BEVERAGES P LTD.
5 KM STONE,MASURI-GULAOTHI ROAD,GHAZIABAD.

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. III

Excise Appeal Nos. 459-460 of 2006 – SM (BR)

[Arising out of the Order-in-Appeal No. 248-249/CE/MRT-II/2005 dated 28-10-2005 passed by The Commissioner (Appeals), Customs & Central Excise, Meerut.]

Hindustan Coca Cola Beverages Pvt. Ltd. Appellant

Versus

CCE, Moradabad Respondent

Appearance

Shri S. Radhakrishnan, Legal Counsel Taxation – for the appellant.

Shri S. Gautam, Authorized Representative (DR) – for the Respondent.

CORAM : Hon'ble Shri P.K. Das, Member (Judicial)

DATE OF HEARING : 05/12/2007.

Final Order No. 44-45/08-SM(BR) Dated: 5/12/07

Per. P.K. Das :-

The appellant filed this appeal against rejection of the refund claim on the ground of unjust enrichment. The learned representative of the appellants submits that they filed the affidavit and the price structure to establish that the duty incidence was not passed to the customer. He also relied upon the decision of the Tribunal in the case of **Girish Foods & Beverages (P) Ltd. Vs. CCE, Pune** reported in **2007 (211) E.L.T. 388 (Tri. – Mumbai)**. The learned DR reiterates the findings of the Commissioner (Appeals). After hearing both the sides and on perusal of the records, I find that the appellants produced the affidavit and the price structures, which are required to be examined by the adjudicating authority. The Tribunal in the case of **Girish Foods & Beverages (P) Ltd. (Supra)** held that the assessee filed affidavit which is liable to be taken into consideration while deciding the principle of unjust enrichment. Accordingly, the impugned order is set aside and the matter is remanded back to the adjudicating authority to decide afresh on the basis of

the documents as placed by the appellants and the case law, as stated above. The appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

PK