

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/957 /2006-SM[BR]

Date 21/02/2008

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

To :
M/S HINDUSTAN COCA-COLA BEVERAGES PVT LTD
5 KM STONE, MASURI-GULAOCHI ROAD,
GHAZIABAD

M/S HINDUSTAN COCA-COLA BEVERAGES PVT LTD

Appellant

Vs

Respondent

C.C.E. MEERUT II

I am directed to transmit herewith a certified copy of Final order No.330/2008 -SM [BR] dated 24.1.2008
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. MEERUT II

OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)

2. Adv. / Consult

MR. VIKRAM SINGH

C-17, ANAND NIKETAN, BENITON JUAREZ MARG, NEW DELHI-110021

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)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeal No. 957 of 2006-SM (BR)

[Arising out of order in appeal No.304-CE/MRT-II/2005 dated 16.12.2005 passed by the Commissioner of Central Excise (Appeals), Meerut-II]

Date of Hearing/ Decision:24.1.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

-
- | | | |
|--|---|--|
| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982. | : | |
| 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | |
-

M

M/s. Hindustan Coca-cola Beverages Ltd. ...Appellants
[Rep. By Shri Radha Krishana, Representative]

Vs.

CCE, Meerut ~ Respondent
[Rep. by Mr. S.L. Meena, Authorized Representative (DR)]

CORAM: **Mr. P.K. Das, Member (Judicial)**
Final Order No. 330.957-SM(BR) Dated: 24.1.2008

Per P.K. Das:

Heard both sides and perused the records.

2. The appellants filed this appeal against denial of credit on inputs and capital goods. By Order-in-Appeal dated 30.07.2004, the Commissioner (Appeals) partly allowed credit. Both the parties filed appeal before the Tribunal against the order of the Commissioner (Appeals). By Final Order dated 28.4.2005 in the appellant's appeal, the Tribunal remanded the matter to the Commissioner (Appeals) directing to decide the matter after affording an effective opportunity of hearing and to examine the issue in the light of the Circular of the Ministry of Finance No.276/110/96-TRU dated 2.12.96. In pursuance of the direction of the Tribunal, the Commissioner (appeals) fixed the hearing on 9.12.2005. The Representative of the appellant appeared before the Commissioner (Appeals) and submitted a letter dated 9.12.2005 requesting to adjourn the matter as the Revenue's appeal against the earlier order of the Commissioner (Appeals) has not yet been disposed of by the Tribunal. It is seen from the impugned order that the Commissioner (Appeals) observed that on 9.12.2005, the representative of the appellants appeared and reiterated the submissions and prayed to allow the appeal. It is

seen that the observation of the Commissioner (Appeals) is contrary to the record.

3. Ld. Counsel submits that the Revenue's appeal has been decided by the Tribunal by Final Order No.1732/06-SM (BR) dated 1.12.2006 and the matter was remanded back to the Commissioner (Appeals).

4. I find that the appellants requested for adjournment on the ground that the Revenue's appeal is pending. Therefore, finding of the Commissioner (Appeals) that the representative of the appellants appeared and prayed to allow the appeal is totally mis-conceived. Therefore, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) to decide afresh after following the direction of the Tribunal by Final Order dated 20.4.2005. It is noted that the Revenue's appeal was disposed of by the Tribunal by Final Order dated 1.12.2006. Hence, the Commissioner (Appeals) is directed to decide both the appeals together, if, no order has yet been passed against Final Order dated 1.12.2006. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 24.1.2008.

(P.K. Das)
Member (Judicial)

Ckp.