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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/3552/2006-SM[BR]

Date 26/06/2008

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

To :
M/S VARUN BEVERAGES LTD
107, K.M. DISTANCE STONE, AGRA-DELHI HIGH WAY, NH-2,VILLAGE-DAUTANA,TEHSIL-CHATTA,MATHURA

M/S VARUN BEVERAGES LTD — Appellant

Vs

C.C.E.LUCKNOW — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1003 /2008 –SM[BR] dated 30.5.2008 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.LUCKNOW
   7-A,ASHOK MARG, CIVIL LINES, ALLAHABAD.
2. Adv. / Consult
   MR.M.A.RANGASWAMY,ADV
   D-2,DEFENCE COLONY,N.DELHI
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, 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, NEW DELHI
PRINCIPAL BENCH NEW DELHI

Excise Appeal No.3552 of 2006 –SM (BR)

[Arising out of Order-in-Appeal No.117-CE/LKO/06 dated 23.08.2006 passed by the Commissioner of Central Excise (Appeals), Lucknow]

Date of Hearing/ Decision:30.5.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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?	:	NA
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/s. Varun Beverages Ltd. ...Appellants

[Rep. by Smt. Nazullh Ahmed, Advocate]

Vs.

CCE, Lucknow ....Respondent

[Rep. by Shri A. Rastogi, DR]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No.1003/08-SM(BR)/Dated:30.5.2008

<u>Per P.K. Das</u>:

Heard both sides and perused the records.

2. The Appellants were engaged in the manufacture of aerated water. They filed refund claim on the ground that they paid duty in pursuance to Board's Circular No.800/33/2004-CX dated 1.10.2004 under protest on

the breakage of their products during handling and clearance. The Commissioner (Appeals) observed that refund claim is not admissible in view of the decision of the Tribunal in the case of Mafatlal Industries Ltd. Vs. CCE, Ahmedabad reported in 2003 (154) ELT 543 (Tribunal).

3. Ld. Advocate submits that the decision of the Tribunal in the case of Mafatlal Industries Ltd. (supra) is over-ruled by the Larger Bench of the Tribunal in the case of Grasim Industries Vs. CCE reported in 2008 (208) ELT 336 (T-LB). She further submits that in their own case for different period on identical issue, the Tribunal in the case of CCE, Lucknow Vs. Varun Beverages Ltd. vide Final Order No.1692/07-SM (BR) dated 27.11.2007 rejected the Revenue's appeal.

4. The relevant portion of the decision of the Tribunal in the case of Varun Beverages Ltd. (supra) is reproduced below:-

> "6. The decision in **Mafatlal Indsustries Ltd.** was overruled by the decision of the larger bench in **Grasim Industries** in which it was held that, reading of the rules under which remission is granted in respect of the goods which were damaged or destroyed by natural cause or by unavoidable accident, did not provide any condition regarding reversal of credit taken in respect of inputs used in such goods. In **Win Medicare P. Ltd. Vs. Commissioner of Central Excise, Meerut**, reported in 2007 (215) ELT 456, the issue was viewed in the following terms :-
>
> "5. The learned Authorized Representative for the department supported the reasoning of the Commissioner (Appeals) and relied upon the Circular of the Board issued on 1-10-04 in which it was clarified that credit of excise duty paid on inputs used in the manufacture of finished goods on which the duty has been remitted due to damage or destruction etc. is not permissible and interest should be recovered. This Circular No.800/33/2004-CX. dated 1-10-04 was issued on the basis of ratio of decision of the Tribunal in *Mafatlal Industries Ltd. v. CCE, Ahmedabad*

reported in 2003 (154) ELT 543. The decision in *Mafatlal Industries Ltd.* has been overruled by the decision of Larger Bench in *Grasim Industries*(supra) in which the Larger Bench held that reading of the Rules under which remission is granted in respect of goods which were damaged or destroyed by natural cause of by unavoidable accident, does not provide any condition regarding reversal of credit taken in respect of inputs used in such goods. The Larger Bench did not agree with the view taken in *Mafatlal Industries* in which it was held that assessee had to reverse the credit taken on the inputs used in the goods on which the remission is granted. The LargerBench approved the view taken in *Inalsa Ltd. v. CCE, New Delhi,* reported in 1997(9)) ELT 417, in which it was held that in case where remission of duty is granted in respect of goods destroyed in fire, modvat credit on inputs used in the manufacture of goods need not to be reversed. It is obvious that the ratio of the decision in *Mafatlal Industries Ltd.*(supra) stands overruled by the decision of Larger Bench in *Grasim Industries*. The Circular of the Board issued on 1-10-04 on the basis of ratio of Mafatlal Industries has therefore, become ineffective and cannot be relied upon by the Revenue as it flies in the face of the ratio of the decision of the Larger Bench in *Grasim Industries* (supra)".

7. For the foregoing reasons, there is no substance in the appeal of the Revenue and it is, therefore, hereby dismissed.

5. In view of the above discussion, I find that the impugned order is not sustainable and accordingly, it is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 30.5.2008.

(P.K. Das)
Member (Judicial)

Ckp.