(17)

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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/2102 / 2006 AND E/ 3208 /2006 –SM[BR] Date 11/08/2008

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant

Vs

MS/ KANDHARI BEGERAGES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1123- 1124 /2008 –SM[BR] dated 30.6.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
MS/ KANDHARI BEGERAGES LTD.
VILLNABIPUR MANID GOBINDGARH, PUNJAB
[2] M/S KANDHARI BEVERAGES LTD.VILLAGE NABIPUR , SIRHIND, DISTT; FATEHGARH SAHIB [PUNJAB]
2. Adv. / Consult SHRI J.P. KAUSHIK ADV.
A-14/3, SFS FLATS, SAKET
NEW DELHI -110017
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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 30.6.2008

Central Excise Appeal No. 2102/2006-SM(BR) and
Excise Appeal No. 3208/2006-SM(BR)

[Arising out of the order-in-Appeal No.244/CE/CHD/06 dated 30.03.2006 and 631/CE/CHD/06 dated 25.7.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

For Approval and Signature:

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

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	N
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

C.C.E. Chandigarh ...... Appellants
vs.
M/s Kandhari Beverages (P) Ltd. ...... Respondent

Appearance:

Shri A.K. Rastogi, DR for the Appellant
Shri J.P. Kaushik, Advocate for the Respondent

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

Final Order No. 1123-1124/08 SM (BR)

Per: P.K. Das:

Common issue is involved in both the appeals and therefore, both are being taken up together for disposal.

2. The issue involved in this case is that respondent did not discharge the duty liability in respect of aerated water bottles, which had been destroyed/broken during handling/loading. Adjudicating authority dropped demand of duty following the Board's Circular No. 261/D/1/75-CX.8 dated 17.9.75. Revenue filed the appeal before the Commissioner (appeals) which had been rejected. Hence, Revenue filed this appeal before the Tribunal.

3. After hearing both the sides and on perused the records. I find that the Respondent's own case CCE, Chandigarh Vs.Kandhari Beverages (P) Ltd reported in 2008 (84) RLT 235 (CESTAT-Del.), the Tribunal held that breakages of bottles of aerated waters duty on such goods, is not payable in view of Board's Circular and input credit need not be reversed as inputs were used in manufacture of final product. The Tribunal dismissed the appeal filed by the Revenue. The ld. Advocate on behalf of the Respondent placed the copy of the order no. 05-07/AC/R/SML/08 dated 30.4.2008 passed by the Assistant Commissioner of Central Excise in the Respondent's own case. It is seen from the said order that the department accepted the order of the Tribunal.

4. In view of the above decisions, I find that there is no reason to interfere the orders of the Commissioner (Appeals). Accordingly the appeals filed by the Revenue are rejected.

(Order dictated & pronounced in open court).

(P.K. Das)
Member (Judicial)

K. Gupta