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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/1757/2007 – SM[BR] Date 09/04/2009

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

To :
HINDUSTAN COCA- COLA BEVERAGES PVT LTD

ENKAY TOWERS, UDYOG VIHAR V,GURGAON.
2.SP 39-40, RIICO INDUSTRIAL AREA, KALADERA,
JAIPUR.

HINDUSTAN COCA- COLA BEVERAGES PVT LTD Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 319 / 2009 –SM[BR] dated 24.3.2009

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. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult SHRI SHIRIN KHAJURIA ADV.
S-336, FF GREATER KAILASH,
PART-II, NEW DELHI-110001.

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 - 3
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
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-1
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Assistant Registrar
(~~SM Appeal~~ Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 1757 OF 2007-SM

[Arising out of Order-in-Appeal No. 72(GRM) CE/JPR-I/2007 dated 23.03.2007 passed by the Commissioner (Appeals-I), Customs & Central Excise, Jaipur]

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 would 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?	Yes

M/s. Hindustan Coca Cola Beverages Pvt. Ltd., Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance:

Smt. Shirin Khajuria, Advocate for the Appellants;
Shri M.M. Singh, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 24th March, 2009

FINAL ORDER NO. 319/09-SM(BR) dated 24.3.09

Per P.K. Das:

The appellants filed this appeal against rejection of refund claim of Rs. 36,396/- by the Commissioner (Appeals) on the ground of unjust enrichment, which was sanctioned by the original authority.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacturing of aerated water bottles. Education Cess was introduced on 9th July, 2004. They paid Education Cess wrongly on the goods which were cleared after 9.7.2004 but, manufactured prior to 9.7.2004. The original authority sanctioned the refund claim. Revenue filed appeal before the Commissioner (Appeals) whereby adjudication order was set aside and refund was rejected on the ground of unjust enrichment. Hence, the appellants filed this appeal.

3. Learned Advocate submits that ~~the price remained same, i.e.~~ prior and during the period in question the price was remained same and there is no scope to presume that the incidence of duty amount was passed on to any other person. She relied upon the decision of the Tribunal in the case of AURO LAB vs. CCE, Madurai, reported in 2005 (185) ELT 88 (Tri.- Chennai). She also submits that the Commissioner (Appeals) erroneously proceeded on the basis of invoice and failed to accept the affidavit stating that the incidence of duty had not passed on to any other

person. She relied upon the decision of the Tribunal in the case of C.C. & C.E., Guntur vs. Empee Sugar & Chemicals Ltd., reported in 2007 (211) ELT 293 (Tri.-Bang.). She submits that the Commissioner (Appeals) passed the order without considering the affidavit which indicates that incidence of duty was not passed on to any other person.

4. Learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that section 12A of Central Excise Act, 1944 provides the sales invoice as a document for selling of the goods. He further submits that invoice indicates the charging of Education Cess which was not refuted by the appellants. He relied upon the decision of the Tribunal in the case of Beckon Electronics Pvt. Ltd. vs. CCE, Rajkot, reported in 2004 (167) ELT 221 (Tri.-Mumbai).

5. After hearing both sides and on perusal of the records, it is seen that the appellants had shown Education Cess in the invoice. Section 12A of the Central Excise Act, 1944 provides that every person who is liable to pay duty of excise on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold. So, invoice is a basic document for the purpose of assessment of duty on the goods at the time of clearance from the factory. In the present case, there is no dispute that the appellants mentioned Education Cess in the

invoice. Therefore, in terms of Section 12B of the Act, it is presumed that the incidence of duty has been passed on to the buyers. Learned Advocate strongly relied upon the affidavit dated 25.11.2004. On perusal of the said affidavit, I do not find any averment that the charging of Education Cess in the invoice has not been passed on to the buyers. There is mere statement that Education Cess so paid by the appellants has been borne entirely by them. It is seen that the Revenue proceeded on the basis of the invoice raised by the appellants which was not refuted by the appellants by any evidence. Therefore, submission made by the learned Advocate cannot be accepted.

6. In view of the above discussion, I find no reason to interfere with the order passed by the Commissioner (Appeals). Accordingly, appeal filed by the appellants is dismissed..

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK