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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/1877/2007 – SM[BR] Date 20/05/2009

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

To :
HINDUSTAN COCA COLA BEVERAGES PVT. LTD.
SP-39-40, RIICO INDL. 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.** 430 / 2009 –SM[BR] dated 26.3.2009

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 KISHORE KUNAL ADV.
405-406, WORLD TRADE CENTRE
BARKHMBA LANE, NEW DELHI -110001.
3. S.D.R
4. ~~J.C.D.R~~.
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

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. 1877 OF 2007-SM

[Arising out of Order-in-Appeal No. 77(GRM)CE/JPR-I/2007 dated 30.03.2007 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?	No
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 (P) Ltd. Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance:

Shri Tarun Gulati & Sh. Kishor Kunal, Advocates for the Appellants;
Shri S. Gautam, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 26th March, 2009

FINAL ORDER NO. 430/09-SM(BR) **dated** 26-3-09

Per P.K. Das:

Heard both sides and perused the records.

2. In the instant case, the appellants had not paid duty on the breakage of PET bottles of aerated water (final product) which is below 0.5%, permissible as per Board's Circular No. 261/1D/75-CX.8 dated 17.9.1975. There was a demand of duty of Rs. 77,856/- and penalty of equal amount along with interest, which is upheld by the Commissioner (Appeals). Finding of the Commissioner (Appeals) is that the Circular was issued long back in 1975. Further, the Circular relates to breakage of glass bottles whereas in the present case, it is PET (Plastic) bottle. Further, the appellants have not produced any evidence to prove that they have informed the department about availing the benefit of the said circular in respect of PET bottles.

3. It is seen from the show cause notice that the demand was raised on the basis of ER-1 return. Learned Advocate on behalf of the appellants submits that the Circular does not indicate glass bottles. It is mentioned only bottles. He submits that on identical issue, the Tribunal in the case of Pepsico India Holding Pvt. Ltd. vs. CCE, reported in 2006 (201) ELT 69 held in favour of the assessee, which was followed by the Tribunal in the case of M/s. Pepsico India Holdings Pvt. Ltd vs. CCE,

Kol-III, vide Final Order No. A-866-867/Kol/08 dated 4.9.2008, CESTAT – KOL.

4. I find that the breakage of PET bottles during the manufacture and before removal is less than 0.5%, which is permissible as per Board's Circular. It is also seen that the appellants mentioned the quantity of breakage in ER-1 return. Further, on the identical issue the Tribunal in the case of Pepsico India Holding (P) Ltd. vide Order dated 4.9.2008 (supra) has held as under:-

"2. Heard the ld. JDR, Shri Manish Kumar, who states that since the appellants are using plastic bottles instead of glass bottles used earlier, there is some doubt in respect of veracity of breakage claim. He also states that the appellants did not keep the broken bottles for inspection to which Shri Debnath explains that these bottles were broken under high pressure and destroyed periodically.

3. After taking into account the submissions made from both sides and the fact that the percentage of breakage is reasonable and duty involved is also meager, we are of the view that this is a fit case for extending the benefit of doubt to the appellants, particularly, since they are periodically intimating to the Excise Department about the breakage every month and it was open to the Excise Authorities to make a visit for inspection of the same. The impugned orders are set aside and both the appeals are allowed."

5. In view of the above discussion and following the decision of the Tribunal in the case of Pepsico India Holdings Pvt. Ltd. (supra) impugned order is set aside. Appeal is allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)