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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/717 /2007 – SM[BR] Date 15/07/2009

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

To :
C.C.E, JALANDHAR
C.R, BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDDIGARH
C.C.E, JALANDHAR Appellant
Vs
AMRITSAR BEVERAGES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 695 / 2009 –SM[BR] dated 6.7.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
AMRITSAR BEVERAGES LTD.
G.T.ROAD, CHHEHARTA, AMRITSAR.
2. Adv. / Consult SHRI HEMANT BAJAJ ADV.
A-5, BASMENT LAJPAT NAGAR –III
NEW DELHI-24.

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

CENTRAL EXCISE APPEAL NO. 717 OF 2007-SM

[Arising out of Order-in-Appeal No. 369/CE/JAL/2006 dated 22.12.2006 passed by the Commissioner (Appeals), Central Excise, Jalandhar]

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

CCE, Jalandhar — Appellant

Vs.

M/s. Amritsar Beverages Ltd., — Respondent

Appearance:

Shri R.K. Verma, D.R. for the Revenue;
Shri Hemant Bajaj, Advocate for the respondent

Coram:

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

Date of hearing/decision: 6th July, 2009

FINAL ORDER NO. 695/2007 SM(BR) **dated** ________

Per P.K. Das:

Heard both sides and perused the records.

2. The respondents are engaged in the manufacture of Aerated Water classifiable under Sub-heading 2201.20 and 2202.20 of the Schedule to the Central Excise Tariff Act, 1985. It has been alleged that the respondents recovered an amount of Rs. 13,72,392/- against 228732 glass bottles from various parties on account of breakage of empty bottles. A show cause notice was issued proposing as to why the amount of Rs. 2,19,583/- should not be recovered from them on account of amount received from various parties in which credit was taken. Original authority confirmed the demand. Commissioner (Appeals) set aside adjudication order.

3. Learned D.R. reiterates the grounds of appeal.

4. On the identical issue the Tribunal in the case of CCE, Ludhiana vs. Ludhiana Beverages Ltd., reported in 2009 (92) RLT 612 (CESTAT-Del.) dismissed the Revenue's appeal. The Tribunal passed the order after considering the Board's Circular No. 697/13/2003-CX dated 27.2.2003. Relevant portion of the order of the Tribunal is reproduced below:-

"I have carefully considered the submissions from both sides. The glass bottles are fragile items. They are used for selling the beverages and there was clear arrangement for return of these bottles as they are capable of repeated use. Similarly, the arrangement in respect of crates in which the bottles are kept and sold. What is sold to the dealers and ultimately to the consumers are beverages. To say that the bottles and crates are sold is little farefetched. At any rate, it is not a case of the glass bottles and crates being removed as inputs "as such". The recovery of amounts towards broken glass bottles cannot be treated as arising out of sale of such bottles. The order of the original authority clearly record that the value of bottles and crates form part of the value of aerated water. Merely because some portion of the bottles and crates get destroyed or are not returned and because the respondent recovers the value towards non-returned bottles cannot lead to a conclusion that such bottles and crates are sold to the dealers as such."

5. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK