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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/399 /2009 – SM[BR] Date 14/12/2010

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

To :
M/S HINDUSTAN COCA-COLA BEVERAGES PVT. LTD.

1. MEHANDIGANJ, RAJATALAB, VARANASI. 2. 3RD FLOOR, ORCHID CENTRE, DLF, GOLF COURSE ROAD, SECTOR-53, GURGAON-122001 (HR)

M/S HINDUSTAN COCA-COLA BEVERAGES PVT. LTD. Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1405 / 2010-SM[BR] dated 3.12.2010 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 ALLAHABAD

38,M.G.MARG, CIVIL LINES, ALLAHABAD

2. Adv. / Consult SHRI SANJEEV DAHIYA, EMPLOYEE OF THE CO.
M/S APPELLANT:----------------------

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

Excise Appeal No.399 of 2009-SM

(Arising out of Order-in-Appeal No.111/CE/ALLD/2008 dated 20.11.2008 passed by the CCE (A), Allahabad)

**Date of Hearing/Decision: 03.12.2010**

For approval and signature:
**Hon'ble Mr.M.Veeraiyan Member (Technical)**

| | | |
|---|---|---|
| 1 | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | Yes |
| 2 | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | Yes |
| 3 | Whether Their Lordships wish to see the fair copy of the Order? | Seen |
| 4 | Whether Order is to be circulated to the Departmental authorities? | Yes |

Hindustan Coca Cola Beverages Pvt.Ltd. Appellant

Vs.

CCE, Allahabad Respondent

Present for the Appellant : Shri Sanjeev Dahiya, Employee of the Co.
Present for the Respondent: Shri K.P.Singh, SDR

**Coram:**
**Hon'ble Mr.M.Veeraiyan, Member (Technical)**

Final **ORDER No.** 1405/2010 SM (BV)

**PER: M.VEERAIYAN**

This is an appeal against order of the Commissioner (Appeals) No.111/CE/ALLD/2008 dated 20.11.2008.

2. Heard both sides.

3. The appellant is a manufacturer of aerated waters and the aerated water bottles indicate "Best before date" which is a requirement under the Prevention of Adulteration Act, 1955. It is not as if the beverages are not consumable after the date indicated as

"Best before date" but in the company's policy, the same are not marketed as they may not be in the best of condition and that the same may not in the interest of maintaining the reputation of the company. They accordingly, applied for remission of duty on certain quantities of aerated water bottles and such permission was under Rule 21 of the Central Excise Rules and the Additional Commissioner vide his order dated 11th January, 2008 granted remission after accepting the view of the appellant that the goods are not marketable. It is submitted that on 28.4.08, the said goods claimed to have been not marketable has been destroyed in presence of excise authority. On appeal by the department against the order of the original authority, the Commissioner (Appeals) has set aside the order of the original authority and that remission is not available as the goods are satisfactorily useable even after "Best before date" and that the appellant has not produced any test certificate before him about poor quality of the product.

4. The authorised representative submits that as per their company's quality policy, the sale of the goods after "best expiry date" is not permissible and that the goods have been destroyed as sale is not in the interest of the name of the company and health of the consumers.

5. Learned DR reiterates the findings of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. Rule 21 permits remission of duty on the goods claimed by the manufacturer as unfit for consumption or for marketing and the decision that it is unfit for consumption or for marketing is the

decision of the management and that the impugned goods stand destroyed.

7. I also find that the goods which are claimed to be unfit for consumption by the appellant stands destroyed in the presence of excise authority. There have been no efforts by the Department to stop destruction, if it was felt that the goods were fit for consumption and that certificate is required to the effect that the goods are unfit for consumption.

8. In view of the above, the order of the Commissioner (Appeals) cannot be allowed to survive. The same is set aside and the order of the original authority is restored.

9. The appeal is allowed with consequential relief as per law.

(Dictated and Pronounced in the open court)

**(M.VEERAIYAN)**
**MEMBER (TECHNICAL)**

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