

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB (SM)

Appeal No. E/2563/00-NB(SM)

Dated: 19/11/2001

CEGAT
NEW DELHI
To,

CCE Delhi - III,

In the matter of :

CCE Delhi - III

Appellant

vs.

M/s Dhillon Cool Drinks & Beverages Ltd;

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/81/2001/NB(SM)
Dated : 15-12-2000 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

M/s Dhillon Cool Drinks &
Beverages Ltd., G.T. Road, Panipat
Vill. Asgarpur, (Haryana)

Asstt. Registrar
NB (SM)

- 1.
2. CCE/CEAT (Appeal) @ New Delhi
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Shri K. K. Anand, Advocate,
A-5, Basement, Lajpat Nagar - III,
New Delhi - 24.
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhisim Pitamah Marg, opp. Sachdeva P.T. College of
Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
15. M/s cen-cus Publication.

Asstt. Registrar

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI

Appdal No. E/2563/00-NB(S)

(Arising out of Order-in-Appeal No.554-CE/DLM/2000 dated 16.5.2000 passed by the Commissioner (Appeals) Central Excise, New Delhi)

C.C.E. Delhi-III .. Appellants
(Rep. by Shri Y.R. Kilania, JDR)

vs.

M/s. Dhillon Cool Drinks & .. Respondents
Beverages Ltd.
(Rep. by Shri K.K. Anand, Advocate)

DOH: 18.10.2000

FINAL ORDER NO. A/81/01/NB (S/M) DT: (S/M)

Per K.K. Bhatia, Member (T):

The Asst. Commissioner of Central Excise, Panipat vide his order dt. 23.9.97 denied the modvat credit amounting to Rs.3,77,327/- to the respondents on the ground that this amount of modvat credit is availed by the respondents on 'glass bottles'. It is stated that under Rule 57A, the modvat credit on packing material i.e., 'glass bottles' used in packing aerated water is allowed only if the cost of bottle is included in the value of bottle of aerated water. It is contended that the inclusion of the value of the bottle calculated on a number of rotations of the value of bottle in the assessable value does not fulfill the condition of Rule 57-A. It is further stated that the bottle in respect of aerated water is returnable packing. The bottle^{is} returned to the bottling plant after the contents are consumed. So, the value of final product being sold in market is the value of the contents of the bottle i.e. 'Aerated Water' ~~and value of bottle. So, the value of the~~

~~final product is the value of the contents of the bottle~~ ^{and the} value of bottle is not included. He, accordingly held that the credit of Rs.3,77,327/- taken by the respondents on glass bottles is not admissible and is recoverable under Rule 57-I. He has also imposed penalty of Rs.2,000/- under Rule 173Q. On appeal, the Commissioner (Appeals) New Delhi vide his order dt. 16.5.2000 allowed the appeal of the respondents relying on the following decisions of the CEGAT.

- (i) Black Diamond Beverages Ltd. vs. C.C.E Calcutta-I - 1997 (22) RLT 37 (CEGAT),
- (ii) Delhi Bottling Co. and others vs. CCE ND and CCE Chandigarh - 1997 (22) RLT 697(CEGAT).

2. The Commissioner (Appeals) has further relied on the CEGAT Final Order No.8/939-946/97-NB in the case of the present appellants, in which it is held that modvat credit is admissible in respect of duty paid on the glass bottles. The present appeal is filed by the Revenue against the above order of Commissioner (Appeals). I have heard Shri Y.R. Kilania, JDR for the appellants and Shri K.K. Anand, Advocate for the Respondents.

3. The only contention raised in the Revenue appeal is that the above stated decision of the CEGAT is being questioned by the Department by way of Reference Application filed by the concerned Commissioner before Calcutta High Court. As already stated, the Tribunal in the present appellant's own

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case vide Final Order No.8/939-946/97-NB have held that the modvat credit is admissible in respect of the duty paid on the glass bottles. Further, the fact that a Reference Application is filed or is in processing of filing before the High Court itself cannot be the ground to not to follow the ratio of a number of settled cases on the issue. The Revenue appeal therefore, has no force and the same is accordingly, rejected.

(Announced in the Court)

ms.

Dt:15.12.2k

(K.K. Bhatia)
Member (Technical)