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# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**

**CUSTOMS APPEAL BRANCH**

Appeal No. ST/243 /2008,393 /2008 - CU[DB]
ST/M/738-39/08

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

Date **01/03/2011**

To :
M/S PEPSICO INDIA HOLDINGS PVT. LTD.

CORPORATE OFFICE: 3B DLF CORPORATE PARK, 'S'
BLOCK QUTAB ENCLAVE,PHASE-III, GURGAON.
2. PEPSICO INDIA HOLDINGS PVT. LTD.
UNIT OFFICE: 6TH FLOOR,
RAJA CJAMBER, RAMPRATAP MARG. LUCKNOW.

**M/S PEPSICO INDIA HOLDINGS PVT. LTD.** Appellant

Vs

**C.C.E. LUCKNOW** Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/68-69/ 2011 CU[DB]** dated 24.02.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Misc Order No ST/38-39/11

Assistant Registrar
(Customs Appeal Branch)

**Copy to :**

1. Respondent
**C.C.E. LUCKNOW**
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House.1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

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**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**

**COURT NO. IV**

**Date of Hearing : 23.2.2011**

**Service Tax Appeal No. 243 & 393 of 2008 and Misc. No. 739 & 738 of 2008**

[Arising out of the Order-in-Appeal No. 199 & 200-CE.LKO/2007 dated 31.12.2007 passed by the Commissioner (Appeals), Central Excise, Lucknow]

For Approval and signature :

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**
**Hon'ble Mr. Mathew John, 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 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? | : | No |
| 4. | Whether order is to be circulated to the Department Authorities? | : | No |

M/s Pepsico India Holdings Pvt. Ltd. — Appellant

Vs.

CCE, Lucknow — Respondent

**Appearance** :

Appeared for Appellant : Shri B.L. Narasimhan, Advocate
Appeared for Respondent : Shri Fateh Singh, SDR

**Coram**:
Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

M.O. No. ST/38-39/11
Final Order No. ST/68-69/11 dated 24.2.11

Per Ashok Jindal:

These appeals are filed by the appellants for denial of refund claim filed by them for excess Service Tax paid on GTA services.

The appellants have filed Misc. applications also for bringing relevant documents on record.

2. Heard both sides.

3. We find that the Misc. applications are filed by the appellants for bringing additional evidence on record which are very much relevant in deciding the issue. Hence the same are taken on record. Accordingly, Misc. applications are allowed. Now, we come to the appeals.

4. The issue involved in these matters relate to denial of a refund claim which was filed for claiming the excess Service Tax paid by the appellant under GTA services. It is the contention of the appellant that while paying the Service Tax on GTA services, the Service Tax was inadvertently paid without claiming the benefit of abatement provided under Notification No. 32/2004 which resulted in an excess payment of Service Tax. The refund claims were rejected by the lower authorities on the ground that the appellants failed to prove that the incidence of duty has not been passed on to the Goods Transport Operators and the appellant has failed to submit necessary declarations in respect of transporters. Therefore, refund claims were rejected. Aggrieved from the said order, the appellants are before us.

5. The ld. Advocate for the appellant submits that during the course of adjudication proceedings, the appellants provided the

sample copy of one of the declarations before the adjudicating authority and they were not given the opportunity to file all the declarations before him and rejected the refund claim. On appeal before the lower appellate authority who did not provide the opportunity to the appellant to defend their case. Hence the impugned order is to be set aside as the same is in violation of principles of natural justice and the matter be remanded back to the original adjudicating authority to pass de novo order.

6. Heard and considered.

7. We have gone through the submissions made by ld. Advocate and ld. DR and we find that during the adjudication proceedings the appellant has submitted a sample declaration from the transporters as required to fulfil the condition under Notification No. 32/2004 and appellants were not given the opportunity to file the remaining declarations for verification and we also find that lower appellate authority has also not granted the reasonable opportunity to the appellants to present their case. Hence, we find that impugned orders are in violation of the principles of natural justice. We further find that the appellant have brought on record all the declarations before us, the same has been treated part of appeal which needs examination at the end of adjudicating authority. Accordingly, matter needs remand. Therefore, after setting aside the impugned orders, we are sending back the matters to the original adjudicating authority to examine declarations filed by the appellants in support of their claims and to pass an appropriate

order after considering the submissions of the appellants, by giving them a reasonable opportunity to defend their case. With these observations, appeals are allowed by way of remand.

(Pronounced in Court)

(Ashok Jindal)
Member (Judicial)

(Mathew John)
Member (Technical)

RM