14

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/1251/2010 - EX[DB] WITH E/S/1285/2010-EX E/COD/348/10& E/CO/169/10-EX   Date **07/12/2011**

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

To :
M/S. SMV BEVERAGES PVT. LTD.

(FORMERLY KNOWN AS CHHATTISGARH BEVERAGES PVT. LTD.) PLOT NO. 26 & 30, URLA INDUSTRIAL COMPLEX, RAIPUR (CG)

M/S. SMV BEVERAGES PVT. LTD. Appellant

Vs

C.C.E. RAIPUR **STAY ORDER NO. 1382/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1008/ 2011 EX[DB]** dated 02-12-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

2. Adv. / Consult
MR.K K ANAND, ADVOCATE
A-103, DEFENCE COLONY, NEW DELHI-110024

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

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

COURT NO. II

DATE OF HEARING : 25/11/11.

Excise Stay Application No. 1285 of 2010 in Appeal No. 1251 of 2010 with COD Application No. 348 of 10 & CO No. 169 of 2010

M/s SMV Beverages Pvt. Ltd. Appellant

Versus

CCE, Raipur Respondent

Appearance

Shri K.K. Anand, Advocate – for the appellant.

Shri I. Beg, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

STAY order No. 1382/2011-EX
FINAL Order No. 1008/2011-EX Dated : ______________

ORDER

Per. D.N. Panda :-

Learned counsel Shri Anand submits that due to variation in MRP in respect of the impugned goods for sale thereof in different areas, department alleges that higher the MRP shall be assessable value for all the goods sold in an area. He submits the justification for the variation on the ground that MRP is fixed on the basis of delivery cost to make the goods reachable in different areas and department has nothing questioned about different MRPs disputing elements of cost relating to different areas. It is an abrupt conclusion that higher the MRP shall be assessable value for entire the lot of goods cleared in respect of different area. According to learned Counsel, Tribunal has already decided the issue in favour of the Assessee in the cases of **CCE, Jaipur vs. Guljag Chemicals (P) Ltd.** reported in **2000 (121) E.L.T. 743 (Tribunal), Goa Bottling Co. Ltd. vs. CCE, Goa** reported in **2001 (128) E.L.T. 81 (Tri. – LB), Gujarat Goldcoin Ceramics Ltd. vs. CCE, Rajkot** reported in **2008 (223) E.L.T. 556 (Tri. – Ahmd.)** and **CCE, Vadodara vs. Bell Granito Ceramics Ltd.** reported in **2009 (235) E.L.T. 171 (Tri. – Ahmd.)**. Therefore, he submits that not only pre-deposit may be waived, appeal may also be disposed following judicial discipline.

2. Learned DR on the other hand points out that para 6 of the appellate order does not permit the appellant to claim variations and in case variation is claimed, higher the MRP shall be the basis for charging duties.

3. Heard both the sides and perused the records.

4. Today, stay application has been listed for hearing. We are conscious that we are at an interim stage. But the matter having been submitted to be settled by different judgments cited by learned Counsel, that persuades us to decide the appeal itself dispensing requirement of pre-deposit. We order accordingly.

5. Dispensing pre-deposit, we went through para 6 of the appellate order. We are unable to find any cogent reason recorded in the impugned order to deny variation. Hypothetical proposition is not acceptable to law unless the proposition stands to reason why variation is not permissible. In para 6 of the order, the authority does not demonstrate any exercise made by him independently to deny variation. It is established principle of law that the Appellate Authority when reaches to conclusion on the basis of fact, should ~~test of~~ support his decision testing the fact with law and evidence and state reasons of his decision. That is not coming out from para 6. Therefore, we unable to approve his order. Accordingly, appeal is allowed.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK