

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH – COURT NO. 1

EXCISE APPEAL No. 21624 of 2015

(Arising out of Order-in-Original No. HYD-EXCUS-001-COM-034-14-15 dated 31.03.2015 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I)

**Aradhana Foods and Juices
Pvt. Ltd.**

...Appellant

(Now known as Pepsico India Holding Pvt. Ltd.)
Pothireddypally Village,
Sangareddy-502995,
Andhra Pradesh

Versus

**Commissioner of Customs, Central Excise,
and Service Tax, Hyderabad-I**
Commissionerate

...Respondent

APPEARANCE:

Mr. B.L. Narasimhan, Advocate for the Appellant
Mr. Bhanu Kiran, Authorized Representative for the Department

WITH

EXCISE APPEAL No. 21678 of 2015

(Arising out of Order-in-Original No. HYD-EXCUS-001-COM-034-14-15 dated 31.03.2015 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I)

**Commissioner of Central Excise,
Hyderabad-I**
Commissionerate, Hyderabad

...Appellant

Versus

**M/s. Aradhana Foods and Juices
Pvt. Ltd.**

...Respondent

Pothireddypally Village, Medak Dist.,
Telangana

APPEARANCE:

Mr. Bhanu Kiran, Authorized Representative for the Department
Mr. B.L. Narasimhan, Advocate for the Respondent

CORAM: **HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT**
 HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing / Decision: 01.10.2021

FINAL ORDER NO. 30317-30318/2021

JUSTICE DILIP GUPTA:

These two Excise Appeals arise from the order dated 31.03.2015 passed by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad-I Commissionerate¹, by which differential duty amounting to Rs. 11,34,506/- has been confirmed against M/s. Aradhana Foods and Juices Pvt. Ltd.² on 'Nimbooz' removed during the period April 2013 to December 2013 with interest and penalty but the demand proposed beyond the normal period of limitation has not been confirmed.

2. Accordingly, **Excise Appeal No. 21624 of 2015** has been filed by Aradhana Foods for setting aside the order dated 31.03.2015 passed by the Commissioner confirming the demand of differential duty on 'Nimbooz' for the normal period of limitation from April 2013 to December 2013, while **Excise Appeal No. 21678 of 2015** has been filed by the Department for setting aside that part of the order passed by the Commissioner that has dropped the demand of differential duty for the extended period of limitation.

3. The issue involved in the appeals is regarding classification of 'Nimbooz'. According to the appellant, it merits classification under CETH 2202 10 20 of the First Schedule to the Central Excise Tariff Act, 1985, but according to the Department it deserves classification under CETH 2202 90 20 under the category of 'fruit pulp or fruit juice based drinks'.

4. A Larger Bench of the Tribunal in **M/s. Brindavan Beverages Private Limited vs. Commissioner Customs, Central Excise and**

1. the Commissioner
2. Aradhana Foods

Service Tax, Hapur and Bareilly³ examined this issue and answered the reference in paragraph 67 of the order, which is re-produced below:

“67. Accordingly, the reference is answered as follows:

The product “Minute Maid Nimbu Fresh (hereinafter referred to as MMNF) manufactured by Brindavan Beverages Private Limited, and 7UP “Nimbooz Masala Soda” or 7UP “Nimbooz” manufactured by PepsiCo India Holdings Private Limited are classifiable under Tariff Item 2202 90 20 of the Central Excise Tariff Schedule under the category of “fruit pulp or fruit juice based drinks”.

5. In view of the aforesaid order of the Larger Bench of the Tribunal, ‘Nimbooz’ would be classifiable under CETH 2202 10 20 of the First Schedule to the Central Excise Tariff Act.

6. In this view of the matter, the issue as to whether the Department was justified in invoking the extended period of limitation does not arise.

7. The order dated 31.03.2015 passed by the Commissioner confirming the demand of differential duty for the normal period of limitation with interest and penalty, therefore, cannot be sustained and is set aside. Excise Appeal No. 21624 of 2015 filed by Aradhana Foods, therefore, deserves to be allowed and is allowed.

8. As the demand of differential duty has been set aside, Excise Appeal No. 21678 of 2015 filed by the Department is dismissed.

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

JB