

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75649 of 2017

(Arising out of Order-in-Appeal No. 05/KOL-V/2017 dated 30.01.2017 passed by the Commissioner of Central Excise (Appeals), Kolkata, 169, A.J.C. Bose Road, Bamboo Villa (4th Floor), Kolkata-700 014)

M/s. Varun Beverages Limited

Barhans Fartabad Charaktala, PO- Garia,
Dist.24 Parganas (South), Kolkata-700 084

**: Applicant /
Appellant**

VERSUS

Commissioner of Central Excise, Kolkata-V

Commissionerate, 180, Shantipally, Rajdanga
Main Road, Kolkata-700107

: Respondent

APPEARANCE:

Shri S. P. Majumder, Advocate for the Applicant

Shri K. Chowdhury, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75852/ 2024

DATE OF HEARING / DECISION: 26.04.2024

ORDER : [PER SHRI ASHOK JINDAL]

In this appeal, the appellant has challenged the classification of the product namely, "Nimbooz Masala Soda".

2. The facts of the case are that the appellant is a franchisee of M/s. PepsiCo Inc. and manufactured and cleared the item viz. "7UP Nimbooz Masala Soda", classifying the same under CTH 2202 90 20 on payment of central excise duty @ 6.18% ad valorem. On the other hand, the Revenue is of the view that the

said item is to be classified under CTH 2202 10 10 and on the said item, duty is payable @ 12.36% ad valorem. Initially, the appellant charged duty from the buyers at the rate of 6.18% but deposited the central excise duty with the Department at the rate of 12.36%, under protest.

3. The matter was adjudicated and demand for the period from 01.03.2014 to 31.05.2015 was confirmed holding the classification under CTH 2202 10 10 of the Act. Aggrieved from the said order, the appellant before us.

4. The Ld. Counsel appearing on behalf of the appellant submits that the dispute in this case has been settled by the Larger Bench of the Tribunal in the case of *Brindavan Beverages Pvt. Ltd. & ors. v. Commr. Of Cus., C.Ex. & S.T., Meerut [2019 (29) G.S.T.L. 418 (Tri. - LB.)]* wherein this Tribunal held that the correct classification is CTH 2202 90 20. Therefore, it is prayed that impugned demand be set aside and the excess duty paid by the appellant is to be refunded.

5. On the other hand, Ld. Authorized Representative for the Revenue relied on the impugned order.

6. Heard the parties and considered their submissions.

7. We find that the issue involved in the present appeal is whether "Nimbooz Masala Soda" is rightly classifiable under CTH 2202 10 10 or CTH 2202 90 20.

7.1. We find that in this case, the Nimbooz Masala Soda is prepared with lemon juice concentrates as its base, which is added to the syrupy liquid consisting of

water, sugar and other constituents. The percentage of lemon juice is 5% of the total beverage content, which makes it the active ingredient of the product and imparts the basic attributes of the drink including its taste and characteristics.

7.2. Therefore, the Nimbooz Masala Soda is a lemon juice based drink. The said issue has been dealt with by the Larger Bench of this Tribunal in the case of *Brindavan Beverages Pvt. Ltd. (supra)* wherein this Tribunal observed as under: -

"50. *The tabular chart of the labels of the first group lemon/lime juice based fruit drink is as follows :*

SAMPLES OF LEMON/LIME JUICE BASED FRUIT DRINKS (CARBONATED AND NON-CARBONATED)

S. No.	Name of Product	Manufactured by	Product Description	Ingredients	Lemon/ Lime Juice Content
.	...	...	...	...	...
10.	7UP Nimbooz Masala Soda	PepsiCo India Holdings Pvt. Ltd.	Carbonated Fruit Drink	Carbonated water, Sugar (10.1%), Concentrated Lemon Juice (0.8%), Salt Sequesterant [452(i)] Acidity regulator (330), Preservative(202). * Equivalent to 5% real lemon juice (reconstituted)	Concentrated Lemon Juice (0.8%), equivalent to 5% real lemon juice

After analyzing the tariff structure of classification, the relied upon precedent decisions, common parlance test, examining the product labels and also the appliable provisions of The Food Safety and Standards

Act, 2006 and the Regulations formulated thereunder, the Hon'ble larger bench at paragraph 67 of the above judgment held as under: -

"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"."

(Emphasis supplied)

7.3. As the issue has been settled by the Larger Bench of this Tribunal holding that the correct classification of the Nimbooz Masala Soda in question is CTH 2202 90 20, therefore, we hold that appellant is liable to pay duty at the rate of 6.18%, which appellant has charged from their customers.

8. Further, we find that appellant has paid excess duty at the rate of 12.36%, under protest. The excess duty paid by the appellant is refundable to the appellant along with interest.

9. In view of this, we dispose of the appeal.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)