IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 81 of 2012

(Arising out of Order-in-Original No.19/SR/COMMR/GHY/2011-12 dated 08.12.2011 passed by Commissioner of Central Excise & Service Tax, Guwahati)

M/s. Varun Beverages Limited (Formerly known as North East Pure Drinks Pvt. Ltd.)
(Rani (PAtgaon), Guwahati-781017 (Assam))

Appellant

VERSUS

Commr. of Central Excise & Service Tax, Guwahati
(Sethi Trust Building, 5th Floor, G. S. Road, Bhangagarh, 781005)

Respondent

APPEARANCE :
Dr. Samir Chkraborty, Sr. Advocate & Mr. Abhijit Biswas, Advocate for the Appellant
Mr. K. Chowdhury, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.76496/2024

Date of Hearing : 08 July 2024
Date of Decision: 31/07/2024

PER R. MURALIDHAR:

The appellant is manufacturer of 'Aerated Water' falling under Chapter 22 of the Central Excise Tariff Act, 1985. They have their manufacturing unit at Rani, Guwahati. In terms of Notification No. 20/2007, in respect of such goods, this Notification specifies that duty exemption is available on value addition if the value addition is to the extent of 36% minimum. Para 3(1) of this Notification specifies that if the manufacturer finds that the actual value addition in the production or manufacture of the said goods is at least 115% of the rate specified in the table (36% in this case), in such a case, the appellant can seek to fix a special rate for their product. Since the duty exemption is dependent on the value addition, if the value addition is more, the assessee would be able to claim higher Excise Duty Exemption.

2. In the present case, the appellants have submitted their documents and claimed that the value addition is to the extent of 91.51% which is much more than the 36% given in the Notification. They have provided the details of turnover along with VAT Return copies and Chartered Accountant's Certificate. The Adjudicating Authority had rejected their application for special rate. Being aggrieved, the appellant is before the Tribunal.

3. The Learned Senior Counsel appearing on behalf of the appellant submits that the appellant has given discount of Rs. 3,70,04,990/- to various buyers as incentive during the period under consideration. Such discount was not known prior to or during the clearance to the buyer. The Appellant Company, based on the off-take of the buyers, on their own, have given such discounts and incentives for the buyers. He submits that such incentives were not known prior to the buyer. Therefore, no abatement is available under Valuation Rules for such incentives and hence the same is required to be taken as part of the transactions value/turnover. He submits that the Adjudicating Authority has deducted the incentive value of Rs. 3,70,04,990/- while arriving at the total turnover, which is erroneous. He relies on the case law of **Purolator India Ltd. vs. Commissioner of Central Excise, Delhi-III-2015 (323) ELT 227 (SC),** in which it is held that unless the Trade Discounts are established under Agreements and the nature of the discount is known at or prior to the removal of the goods, no abatement can be claimed for such discounts given. He also relies on the case law of **SRF Ltd. Vs. CEGAT, Chennai, 2021 (377) ELT 737 (Mad.),** wherein it is held that subsequent issuance of Credit Note towards discount will not allow the assessee to avail the benefit of abatement. Relying on these case laws and the factual details discussed above, he submits that the Adjudicating Authority is in error in removing the incentive of Rs. 3,70,04,990/- to arrive at the value for the turnover.

4. Apart from this, the Appellant is operating under the beneficial VAT Scheme in terms of The Assam Industries (Tax Remission)

Scheme, 2005. As per this Scheme, the Appellant is required to pay only 1% of the VAT and balance 99% of the VAT is given as remission by the State Government. The Adjudicating Authority has held that the entire 100% of the VAT amount is required to be excluded from the turnover to arrive at the net turnover.

5. The Learned Senior Advocate submits that Adjudicating Authority is in error in taking the stand. He relies on the judgment of **CCE, Jaipur-II Vs. Super Synotex (India) Ltd.-2014 (301) ELT 273 (SC) and CCE, Jaipur Vs. Shree Rajasthan Syntex Ltd.-2015 (318) ELT 626 (SC)**, in which it is held that the component of Sales Tax which was retained by the assessee will be includable in arriving at the transaction value for payment of Excise Duty. Therefore, he submits that the Adjudicating Authority has erroneously removed Rs. 3,70,04,990/- (discount and incentive) and Rs. 3,33,62,000 in respect of the VAT from the turnover and has rejected the appellant's request for fixation of special rates. He submits that these two amounts should be considered as part of the total sales turnover of the appellant and once this is done, it will get clarified that the value addition is to the extent of 91.57% which is much more than 36% given at serial No. 16, Column 4 of the Exemption Notification No. 20/2007-CE dated 25/4/2007. Therefore, he submits that the appeal may be allowed with a direction to the Adjudicating Authority to fix the special rate as requested by the appellant.

6. The Learned AR submits that it is on record that the appellant has passed on the incentives and discounts to the buyers of the goods and are accounted for in their Profit & Loss Accounts. Therefore, such discounts and incentives will have to be removed from the total turnover to arrive at the net turnover. Similarly in respect of the VAT, he submits that the appellant has collected the value of VAT from the customers but 99% of VAT has been given as remission by the State Government. Therefore, this cannot be treated as part of the turnover of the Appellant. Therefore, he justifies the rejection of the appellant's application towards fixation of special rates.

7. Heard both sides and perused the appeal papers and documents made available to us.

8. Notification No. 20/2007-CE dated 25/4/2007 specifies that for the goods covered under Serial No. 16, the minimum value addition shall be to the extent of 36%.This Notification grants Excise Duty exemption for this value addition of 36%. In terms of Para 3(1), if the value addition is more than 115% of this rate, the assessee can seek fixation of special rate. In this case, in order to be eligible for fixation of special rate, the value addition should be 41.4% (being 115% of 36%). The appellant has produced Charted Accountant's as per the following table, which is also taken on record in the OIO.

Paticulars	Amount (Rs.)
Sale Value of the said goods excluding Excise Duty, Value Added Tax and other Indirect Taxes, if any, paid on the goods	528,590,385
Less: Cost of raw material and packing material consumed	282,874,486
Less: Cost of fuel consumed if eligible for input credit under CENVAT Credit Rules, 2004	8,929,593
Add: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year (35871696-4411996)	31,459,700
Less: Value of the said goods available as inventory in the unit but not cleared, at the end of the financial year preceding that under consideration: (17159763-1575132)	15,584,631
Value Addition	252,661,376
Rate of Value Addition (As % of cost of sales)	91.57

9. On going through the Profit & Loss Account submitted by the appellant, it is seen that the appellant is showing the turnover as 61,98,01,442/- and Excise Duty of 2,64,92,742/-. If these figures are considered and the disallowed turnovers on account of incentive/discount and VAT as held by the Adjudicating Authority are considered, the turnover would be as under:-

Gross turnover	: 61,98,01,442	
Excise Duty	: - 2,64,92,742	
Net turnover	: 59,33,08,700	
Less-Discount/Incentive	: 3,70,04,990 }	Disallowed by
Less-VAT Remission	: 3,33,62,000}	Adjudicating Authority
Final Net turnover	: 52,29,41,710	

Final Net turnover as per CA's Certificate: 52,85,90,385

10. From the above Table, it gets clarified that even after considering both VAT amount and discount as not part of the turnover, still the turnover comes to Rs. 52,29,41,710, whereas the appellant/Chartered Accountant has taken the turnover as Rs. 52,85,90,385/-. Based on their figure of Rs. 52,85,90,385/-, the appellant has arrived at the figure of value addition of 91.57%. If the turnover is considered as 52,29,41,710/-, still, the value addition would be more than 85%, whereas the value addition required in this case is to the extent of 41.4%.

11. So far as the rejection of turnover on account of discount is concerned, we do not see any merits in the arguments of the appellant. It is on record that the appellants have given the discount to the buyers in the same year and as a matter of fact the Chartered Account has removed this amount while arriving at the net turnover. Therefore, we hold that the Adjudicating Authority was correct in removing the discount/incentive amount from the total sales so as to arrive at the net sales turnover.

12. In respect of the VAT turnover, the appellant has been maintaining that the amount of incentive received by them should be included in the total turnover. For this, they have relied on the transaction value as per Rule 2(c) of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 [Valuation Rules, 2000] and Section 4 of the Central Excise Rules, 1944. The appellant relies on the explanation given at Section 4 wherein, it is

clarified that sales tax and another taxes, if any, actually paid, shall be deemed to include the duty payable on such goods. On this count, the appellant also has cited certain case laws.

13. We find that the goods in question 'Aerated Water' fall under Chapter 22. In terms of Notification No. 49/2008-CE (NT) dated 24/12/2008, the goods are subjected to Section 4A valuation. As per Section 4A Valuation, the Excise Duty is required to be paid based on the abatement given as a percentage of Retail Sale Price. Therefore, the provisions contained in Section 4 and Valuation Rule 2000 cannot be applied to arrive at the transaction value. From the above Table, we also find that even the Chartered Accountant has removed this amount, from the total turnover to arrive at the Valuation @ 91.57%. Hence, we are unable to accept the appellant's arguments for including the VAT amount for arriving at the net turnover.

14. As discussed above, even if the turnover figure given by the appellant is different from the figure arrived at as per above calculation, still the value addition is likely to be more than 85%. Therefore, we remand the matter to the Adjudicating Authority to consider these aspects and arrive at the correct value addition. If it is found that the value addition is more than 41.4%, the request of the appellant towards fixation of special rate should be entertained.

15. The appeal is disposed off thus.

(Pronounced in the open court on 31/07/2024.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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