

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

WEST ZONAL BENCH

Excise Appeal No. 86406 of 2016

(Arising out of Order-in-Appeal No. CD/234/M-II/2016 dated 22.03.2016 passed by the Commissioner of CE (Appeals), Mumbai II)

Pepsico India Holding Pvt. Ltd.Appellant
LU Gadkari Marg,
Anik Village, Mahul, Mumbai

VERSUS

Commissioner of Central Excise, MumbaiRespondent
II
9th Floor, Piramal Chamber,
Jijabhoy Lane, Lalbaug, Mumbai

APPEARANCE:

Ms. Payal, Advocate for the appellant
Shri Amrendra Kumar Jha, (AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/85964/2023

DATE OF HEARING : 23.12.2022
DATE OF DECISION : 19.06.2023

Per: AJAY SHARMA

This appeal has been filed from the impugned Order 22.03.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai II by which the appeal filed by the appellant was rejected.

2. The appellant herein are manufacturing and clearing synthetic mix preparation and aerated beverages and are availing Cenvat credit. The bottles in which aerated water is filled under pressure are fragile and are prone to breakage at various stages like crating, warehousing and loading etc. which is unavoidable. In order to avoid any accident/injuries such broken bottles are removed from the floor and sent to scrap and are duly recorded in the books of account and reflected in ER-1 as well as RG-1 register as claimed by the appellant. Since the appellant failed to discharge duty on clearing the scrap bottles therefore a show cause notice dated 06.01.2015 issued to them demanding Central Excise Duty amounting to Rs.2,56,831/- alongwith interest and penalty which was confirmed by the adjudicating authority vide order-in-original dated 29.6.2015 and upheld by the 1st Appellate Authority vide impugned order dated 22.3.2016.

3. The issue involved herein is in very narrow compass whether the appellant is liable to pay excise duty of Rs.2,56,831/- on the scrap of glass bottles cleared by them during the period December, 2013 to May, 2014? Learned Commissioner (Appeal) in the impugned order has specifically observed, after reproducing the CBEC Circular No. 930/20/2010-CX dated 9.7.2010, that the remission application filed by the appellant as Rule 21 of Central Excise Rules, 2002 has already been rejected and the same has been elaborately discussed in

the Order-in-Original. Whereas in the Order-in-Original there is no such discussion on the remission application and the appellant also in their appeal herein have specifically mentioned in *Ground C.2* that no such formal order has been passed as yet and that the said presumption of learned commissioner is without any basis. I am also unable to find any such discussion in the Order-in-Original as stated by learned Commissioner in the impugned order. Therefore I think that the impugned order has been passed by the learned commissioner without properly looking into the facts and the adjudicating order. Even the date of the Order-in-Original which is of June, 2015 has been wrongly mentioned as 20.10.2015 which also supported that it has not been properly looked into by the learned Commissioner (Appeals). Therefore without going into the merits of the matter I feel it proper to remand the matter to the 1st Appellate authority with a direction to decide the same afresh, within a period of three months from the date of receipt of this order, after properly looking into the facts and the adjudicating order. Since much water has flown under the bridge after the passing of the Order-in-Appeal herein and so many decisions have come on the issue involved therefore appellant is directed to produce all the case laws in support of their submission and the learned commissioner is directed to look into them also before deciding the appeal.

4. In view of the discussions made hereinabove, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand to the Commissioner (Appeals).

(Pronounced in open Court on 19.06.2023)

(Ajay Sharma)
Member (Judicial)

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