CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 4

EXCISE APPEAL NO. 89274 OF 2013
(Arising out of Order-In-Appeal no. US/197/M-II/2013 dated 22.07.2013 passed by Commissioner of Central Excise (Appeals-II).)

PEPSICO INDIA HOLDINGS LTD.
LU Gadkari Marg,
Anik Village, Mahul
Mumbai-400074.
.........Appellant

Vs.

COMMISSIONER OF CENTRAL EXCISE, MUMBAI-II
Utpad Shulk Bhavan,
Sector-E, BKC Complex,
Bandra East,
Mumbai-400051
......Respondent

Appearance:
Ms. Payal Nahar, Advocate for the Appellant.

Shri P.K. Acharya, Superintendent for the Respondent.

CORAM:
HON'BLE MR. ANIL.G.SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 31.10.2023
Date of Decision: 31.10.2023

FINAL ORDER NO. 87085/2023

After hearing both the sides and on perusal of record, I note that the Appellant is manufacturer of aerated drinks and the issue was related to demand of central excise duty on the broken glass bottles which was confirmed against the Appellant. The submissions and record indicates that Appellant had followed the procedure set out by CBEC through Circular No. 930/20/2010 –CX dated 09.07.2010 wherein it was directed by CBIC in paragraph 2 of said circular that if the final product i.e. bottled beverages is broken, then remission can be claimed under rule 21 of Central Excise rules 2002. Following the said circular, appellant filed remission application on 17.09.2012 in respect of bottles broken between the period from March, 2012 to August, 2012.

2. When the remission application was pending disposal, Appellant was issued with the show cause notice dated 28.11.2012 demanding Central Excise Duty involved to the tune of around Rupees four lakh. Following the said circular dated 09.07.2012 Appellant also debited the involved CENVAT credit. However, during the proceedings at the lower level the duty was

confirmed and remission application was rejected only on one ground and i.e. the application was made after the removal of goods.

3. Learned Authorized Representative has submitted that reading of the said rule 21 indicates that the application should be made before removal of the goods. Learned Counsel for the Appellant has brought the notice of this court to the final order no. A/90956/2017 dated 21.7.2017 passed in Appellant's own case in appeal no. E/88171/2013 wherein under similar circumstances duty demanded was set-aside. At this stage, Learned Authorized Representative has stated that said final order is not applicable to the facts of present case because it is not known whether in the present case breakages were during loading or unloading where as in the case decided on 21.07.2017 the breakages were related to loading and unloading.

4. I have gone carefully through the record and submissions. I have also perused the provisions of said rule 21. I understand from said rule 21 that the words, "at any time before removal" in sub-rule (1) of rule 21 are related to admissibility of remission for goods destroyed. In other words, the said words are qualifying that if the goods are destroyed after removal then remission is not admissible.

6. The view of Revenue that the said words are related to filing of remission application is not appreciated. Therefore, I set-aside the impugned order and allow the appeal.

(Dictated and pronounced in open court)

(ANIL.G.SHAKKARWAR)
MEMBER (TECHNICAL)

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