



::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,  
7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, 7<sup>th</sup> Floor, Central Excise  
पोलिटेकनिक के पास, Building,  
आम्बवाडी, अहमदाबाद : 380015 Near Polytechnic,  
Ambavadi,  
Ahmedabad:380015



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(22)73 /Ahd-II/Appeals-II/ 2015-16 / 316 to 320  
V2(22)74 /Ahd-II/Appeals-II/ 2015-16

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP—084-085-16-17

दिनांक (Date): 16.02.2017, जारी करने की तारीख (Date of issue): 21/02/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No. 10-11/AC/DEMAND/15-16 Dated: 30/09/2015  
issued by: Assistant Commissioner Central Excise (Div-I), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

**M/s Sheelpe Enterprises Pvt. Ltd.**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person an aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अंतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

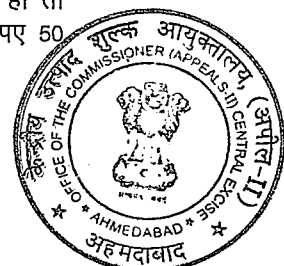
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हों तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क: अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

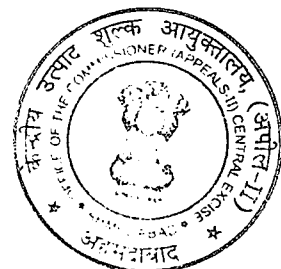
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

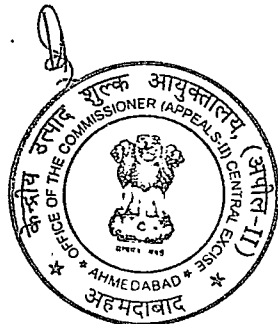


**ORDER IN APPEAL**

Subject appeals are filed by M/s. Sheelpe Enterprises Pvt. Ltd. Survey No. 316. C S D Depot Road, Off Airport Road. Hansol, Ahmedabad (hereinafter referred to as "the appellant") against OIO no.10-11/AC/demand/15-16 [hereinafter referred to as 'the impugned order'] passed by The Asstt. Commissioner, Central Excise, Div-I, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). They are engaged in the manufacture of Natural Mineral Water falling under Chapter 22 of the Central Excise Tariff Act, 1985 [hereinafter referred to as CETA, 1985] The appellant is availing CENVAT credit on raw materials and capital goods under Cenvat Credit Rules, 2004 (herein after referred as CCR.2004).

2. Briefly stated the fact of the case is, The appellants had cleared "AAVA" brand Natural Mineral Water without payment of Excise duty to M/s. EIH Limited. Delhi by availing benefit of Notification No. 34/2006-CE dated 14.06.2006, which provides exemption to goods supplied to service provider under Served From India Scheme (SFIS). The supply is made without payment of Central Excise duty by debiting the import authorization issued under Served from India Scheme (SFIS). The appellant submitted copy of SFIS Authorization. The appellant has cleared Natural Mineral Water involving Excise Duty of Rs. 56000/+345681/- without payment of Excise Duty. In case of hotel or stand alone restaurant, Notification No. 34/2006-CE dated 14.06.2006, *inter-alia* exempts food items and alcoholic beverages but excluding other products classifiable in Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Therefore, "AAVA" Natural Mineral Water did not appear to be covered under "food items". Therefore, the clearance of said goods without payment of Central Excise duty did not appear to be in compliance with the condition (ii) of the said notification. The amount of Excise Duty, with interest under Section 11AA of the CEA 1944. The appellants also made liable to pay an amount equal to six per cent of value of the exempted goods as provided under clause (i) of sub-rule (3) of Rule 6 of CCR. 2004 and liable to penalty as provided under Rule 15(1) of CCR, 2004. Two Show Cause Notices issued and vide impugned orders, the demand of duty Rs. 56000/+345681/- confirmed with penalty.

3. Being aggrieved with the said impugned orders the appellant preferred



these appeals on the following main grounds.

- (a). That during the relevant period from August-2014 to December-2014, they had cleared natural mineral water of 'Aava brand' by availing benefit of exemption from payment of duty in terms of Notification No. 34/2006-CE . The said notification grants exemption to the excisable goods from the whole of duty subject to the condition that the buyer has to produce duty free certificate issued under 'Server From India Scheme' (SFIS) as per Para 3.6.4 of Foreign Trade Policy 2006-2007.
- (b). That the procedure for debiting scrips in case of domestic procurement has been given in the CBEC Circular No. 837/14/2006-CE dated 03.11.2006. The entire procedure has been followed properly and then only the appropriate duty was debited in the SFIS licence by the Central Excise officer.
- (c). That the SFIS licence submitted by them was given by their buyer, and the same was produced before the Central Excise authorities. The SFIS licence contained the description 'Duty credit scrip may also be used for import of consumables including food items and alcoholic beverages'. The goods once cleared are duty paid goods, and duty stands debited in the SFIS scrip. Therefore, they are eligible for clearing the goods under Notification No. 34/2006-CE and there cannot be any separate duty demand against them. That even if the benefit of the said Notification is allowed, the nature of the goods. i.e. Natural mineral water cleared by them does not become 'exempted goods'.
- (d). The only dispute is regarding whether such clearances made by them under said Notification would be considered as exempted clearances and they are required to pay amount equal to 6% of the value of the goods cleared that the issue is now settled by the Tribunal vide order passed in the case of Universal Power Transformers Pvt. Ltd. V. CCE, Bangalore as reported in 2010 (256) E.L.T. 244 (Tri.-Bang).
- (e). That various provisions of law have held that 'packaged drinking water' is 'food' and therefore, the benefit of the said Notification cannot be denied to them. They placed reliance on the Notification No. G-SR 202E dated 21-03-2001 issued by the Ministry of Health and Family Welfare, issued under Section 2(v)(e) of the Prevention of Food Adulteration Act, 1954, regarding declaration of packaged drinking water as "Food" for the purposes of the



Prevention of Food Adulteration Act,1954 under Section 23 of the said Act.

(f). They also relied on the order dated 28.02.2012 of the Hon"ble High Court of Delhi, in the matter of Pepsico India Holdings Pvt. Ltd. Vs. Union of India in WP (C) No. 6791/2008 & WP (Cri.) No. 244/2010. It was held that,

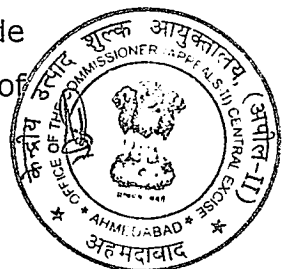
*"14. We are entirely in agreement with the aforesaid approach taken by the two High Courts in the aforesaid judgments.....  
Xxxxfood-for the purposes of this code the term includes bottled/ packaged drinking water".*

(g). It is also submitted that packaged drinking water is also included in the definition of "food' under the Food Safety and Standards Act 2006, and it will have the same meaning for the purpose of Central Excise Act. 1944.

4. Personal Hearing held on 16.11.2016 wherein Shri Behram Mehta, Managing Director, Shri Shiroy Mehta, Director and Shri R. Subramanya, Advocate appeared. Shri R. Subramanya reiterated facts which they have submitted in their written submission. They also submitted various judgments related to their issue and copy of Food Safety and Standards Act, 2006.

I have carefully gone through all records placed before me in the form of the SCN, impugned orders and written submissions made by the appellant. I find that, the main issue involved in this case is regarding admissibility of the benefit of Notification No. 34/2006-CE dated 14.06.2006-CE, as amended, to "Natural Mineral Water". As regards the contention in the SCNs that the water in packaged form is not a food item for the purpose of SFIS.

5. I find that, the adjudicating authority has relied on definition of 'food' taken from the internet, website [www.freedictionary.com](http://www.freedictionary.com) is not authenticated by any source or governmental authority. I also find that the adjudicating authority has not considered the relevant statute of Govt. of India e.g. Safety & Standard Act 2006 or any such statute which defines "Packaged Water" or "Food". The HSN has also not been quoted. The impugned order does not say why Packaged/Bottled water falling under Chapter Heading 22 as Beverages, Sprints and Vinegar" will not include water and will be in the excluded category of the notification. The Para (i) of notification 34/2006 ibid reads



"...office equipment, professional equipment, office furniture and consumables, related to its service sector business and food items and alcoholic beverages but excluding other product classifiable in chapter 1 to 24.....".

The plain reading of this gives the impression that even office consumable & furnitures are also included in this exemption notification, which is available to the service sector business. In the service sector business, restaurant & Hotels are very important segment, then it is not understood, how water being the most common thing which is served with food or alcoholic beverages, be excluded from the benefit of the notification ? The first item which is served in a restaurant, upon arrival, is water, then a question arises how come water will be taken out of purview of the notification 34/2006 ? Can food be served in any restaurant without water? Can beverage be served without water? The simple answer is no, than by same logic, how water can be treated in the excluding part of the notification? Will a notification which gives exemption to office equipment & its consumable and even to furniture used in a restaurant, will not give exemption to water, is unconceivable. In such a scenario a computer paper, broom, mop etc (being office consumable) becomes more important than water, which is the 1<sup>st</sup> item to be served in a restaurant/hotel. It has been held in catena of decision that statute should be interpreted in a simple and clear way so as to arrive at the legislative intent and to avoid absurd and unjust situation. The impugned order leads us to an absurd meaning of packaged water if it is taken out of the definition of food. *Lord Denning in his book 'The Discipline of law' has stated that "whenever there is a choice, choose the meaning which accords with reasons and justice". It is further stated in the said book that whenever strict interpretation of statute gives rise to absurd and unjust situation, the Judges can and should use their good sense to remedy it - by reading words in, if necessary - so as to do what Parliament would have done, had they had the situation in mind.* Keeping this in view the definition of the word 'food' defined under the relevant statutes has to be understood. In a number of decisions, Hon'ble High Courts as well as Apex Court have stated, how a statute or notification is to be understood and interpreted.

In case of **Cauvery Mineral Waters Private ... vs Bureau Of Indian Standards And ...** on 29 August, 2002, Hon'ble High Court has stated that

*"Whenever there is a doubt as to the meaning of a*



*provision, it is just and necessary to look into the preamble in order to ascertain the intention of the Legislature. From the well-established rules of legislation of the statute, the preamble and title may legitimately be consulted to solve any ambiguity, or to fix the meaning of the word which may have more than one or to keep the effect of the Act within the real scope whenever the enacting part is in any of these respects open to doubt. If literal construction would defeat the obvious intention of the Legislature and produce a wholly unreasonable result, the Court must "do some violence to the words" and so achieve that obvious intention and produce a rational construction as held by the Court in the case of Ajit Investment Company Private Limited, Jamnagar, Gujarat and Anr. v. K.G. Malvadkar and Ors., AIR 1973 Bom. 285."*

Further in case of **INDIAN TOBACCO ASSOCIATION** as reported in 2005 (187) E.L.T. 162 (S.C.), Hon'ble apex Court has said that while interpreting the statute has stated that "*Doctrine of fairness is a relevant factor*", and also that

*"It is also well-settled that an expression used in a statute should be given its ordinary meaning unless it leads to an anomalous or absurd situation."*

Further in case of **PARMESHWARAN SUBRAMANI** as reported in 2009 (242) E.L.T. 162 (S.C.)

*Interpretation of statutes - Legislative intention - No scope for court to undertake exercise to read something into provisions which the legislature in its wisdom consciously omitted - Intention of legislature to be gathered from language used where the language is clear - Enlarging scope of legislation or legislative intention not the duty of Court when language of provision is plain - Court cannot rewrite legislation as it has no power to legislate - Courts cannot add words to a statute or read words into it which are not there - Court cannot correct or make assumed deficiency when words are clear and unambiguous - Courts to decide what the*



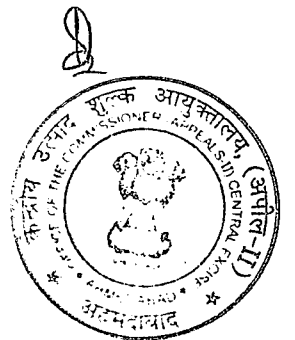


*law is and not what it should be - Courts to adopt construction which will carry out obvious intention of legislature.*

Now I will examine the word "food", whether it will include "packaged water" or otherwise. I find that, the Notification No. G-SR 202E dated 21.03.2001 issued by the Ministry of Health and Family Welfare, issued under Section 2(v)(e) of the Prevention of Food Adulteration Act, 1954, regarding declaration of packaged drinking water as "Food" for the purposes of the Prevention of Food Adulteration Act, 1954 under Section 23 of the Prevention of Food Adulteration Act, 1954.

6. Further, I also rely on the order dated 28.02.2012 of Hon"ble High Court of Delhi, in the matter of Pepsico India Holdings Pvt. Ltd. Vs. Union of India in WP (C) No. 6791/2008 & WP (Cri.) No. 244/2010. it is held that;

*"14. We are entirely in agreement with the aforesaid approach taken by the two High Courts in the aforesaid judgments. The reasons given therein provide answer of all the arguments raised by the counsel for the petitioners and therefore, we need not repeat the same. Apart from what is stated by the respondents about the processing that is required to be undertaken before making it packaged drinking water, which substantiates their case, we would like to refer to „Code of Hygienic Practice for Bottled/Packaged Drinking Waters (Other Than Natural Mineral Water) CAC/RCP 48- 2001. Introduction to this Code points out that international trade in bottled water has increased in recent years, both in quantity and diversity. Aside from water shortages, need to improve health also have contributed to an escalating trade in bottled water. Increasingly, it has been recognized that traditional suppliers of drinking water such as public and private water works may not always be able to guarantee micro-biological, mechanical and chemical safety of their product to the extent previously thought possible. Thus, what is highlighted is that people are becoming health conscious*



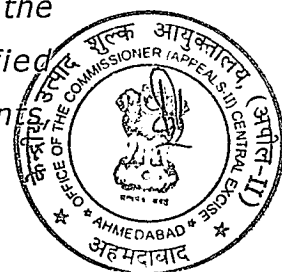
*in so far as consumption of water is concerned and do not want to depend upon public or private water works which may be contaminated with virus and parasite protozoa. For this reason, they want to consume treated water packaged in bottles. Such treated water, therefore, does not remain ordinary drinking water per se, which the Legislature intended to exclude from the definition of „food“ under Section 2(v) of the PFA Act. In the aforesaid Code the need to regulate such bottled water from health and hygiene point of view is emphasized. The Code recognizes general technique for collecting, processing, packaging, storing, transporting, distributing and offering for sale a variety of drinking waters other than other mineral waters for direct consumption. This Code contains various definitions. For our purposes definitions of „bottled/packageg drinking water“ and „food“ are material and are reproduced below:-*

**"Bottled/packageg drinking\_ water** - Water filled into hermetically sealed containers of various compositions, forms, and capacities that is safe ansuitable for direct consumption without necessary further treatment/BO tiled drinking water is considered as food. The terms "drinking" and "potable" are used interchangeably in relation to water. xxxxx **Food** - For the purposes of this Code, the term includes bottled/packageg drinking water."

Xxxxfood-for the purposes of this code the term includes bottled/ packageg drinking water".

7. I also find that, packaged drinking water is also included in the definition of 'food' under the **Food Safety and Standards Act, 2006, section 3 sub-section (j) defines "Food" as;**

"Food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredient



*infant food, **packaged drinking water**, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psycho tropic substances:*

8. In view of the above, I find that, packaged drinking water is food for the purpose of food safety regulations, and it will have the same meaning for the purpose of Central Excise Act, 1944 that appellants are eligible for the benefit of Notification no. 34/2006-CE, as they have correctly got the proper duties debited in the SFIS licenses for clearance of Natural mineral water as food items. Therefore, I hold that, the demand of duty and penalties imposed are not sustainable, and liable to be set aside.

9. In view of the foregoing discussion and findings, I allow both the appeals filed by the appellants and set aside the impugned orders.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10 The appeal filed by the appellants stand disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स - II)

Attested

*K.K. Parmar*

(K.K.Parmar )

Superintendent (Appeals-II)  
Central excise, Ahmedabad

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4. The Asstt. Commissioner (Systems),Central Excise, Ahmedabad-II.
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