



आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या (File No.): V2(32)186/North/Appeals/ 2018-19 / 10469 to 10473

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-239-18-19

दिनांक (Date): 29/03/2019 जारी करने की तारीख (Date of issue): 09/05/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 06//DC/D/2018/AKJ Dated: 19/11/2018

issued by: Deputy Commissioner-Central Excise (Div-IV), Ahmedabad North,

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

M/s Surya International

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 अतत 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।



ORDER-IN-APPEAL

M/s Surya international,444/P, Ashwamegh Estate, Sarkhej-Bavla Highway,Changodar,Ahmedabad(henceforth, "appellant") has filed the present appeal against the Order-in-Original No.06/DC/D/2018/AKJ dated 02.11.2018 (henceforth,"impugned order") passed by the Deputy Commissioner, CGSR & Central Excise, Div-IV, Ahmedabad-North (henceforth, "adjudicating authority").

2. The facts giving rise to the present appeal, in brief, are as follows. The appellant are manufacturing flavoring essence, food colour, rose syrup, rose water, kewara water etc falling under chapter 33,32,21,33 and 33 of Central Excise Tariff Act,1985. During CERA audit it was observed that prior to December 2016, the appellant was classifying the product 'Lemon Juice/dressing' and 'Beverage Concrete'(instant drink powder)under S.H.No.22029020 and 21069019 respectively and w.e.f Dec.2016/Jan. 2017 they changed it to 20089912 & 20089919 respectively of Central Excise Tariff Act,1985. It was observed by audit from list of ingredients and nature of product that said products are classifiable under 21069019 of Central Excise Tariff Act,1985 and hence show cause notice for differential duty of rs.5,79,404/- in respect of export of said products under rebate and duty Rs.8,45,638/- against export under LUT/CT3 was issued which was decided under impugned order classifying 'Lemon Juice/dressing' under S.H.No.22029020 and 'Beverage Concrete'(instant drink power)under S.H.No.21069019 of Central Excise Tariff Act,1985, confirming total demand Rs.14,25,,042/- along with interest and penalty.

3. Being aggrieved with the impugned order the appellant preferred this appeal contesting *inter alia*, that goods in question has been exported; that intimation of said new product given to the department has been accepted without any objection; that demand is against the government's policy not to export the tax; that from chapter note under chapter 20 it is 'instant drink powder falls under 20089999 of Central Excise Tariff Act,1985; that following general rules of interpretation of first schedule, most specific description i.e. lemon the product, 'Lemon Juice/dressing' was classified under 20089912; that adjudicating authority failed to accept Revenue neutrality of the issue and cited various case laws; that reply to show cause notice is not considered by adjudicating authority, Etc.,

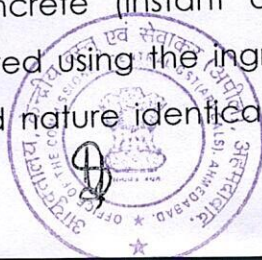


4. In the Personal hearing held on 07.03.2019 wherein Shri R.R.Dave, consultant reiterated grounds of appeal and stated that goods exported and rebate has been granted, subsequently audit objection of classification raised, the issue is Revenue neutral.

5. I have carefully gone through the facts of the case records and submissions made therein. The issue requiring determination in the case is classification of the product 'Lemon Juice/dressing' and 'Beverage Concrete (instant drink powder)' manufactured by the appellant and cleared for export under rebate/LUT,CT-1. The product 'Lemon Juice/dressing' has been classified by the appellant under S.H.No.22029020 prior to Dec 2016 and then after under S.H.No.20089912 whereas the adjudicating authority held it under S.H.No.22029020. Another product 'Beverage Concrete (instant drink powder)' has been classified by the appellant under S.H.No 21069019 prior to Dec 2016 and then after under S.H.No 200089999 whereas the adjudicating authority held its classification under S.H.No 21069019 of Central Excise Tariff Act,1985.

6. The product 'Lemon Juice/dressing' has been classified by the appellant under chapter 2008. Said chapter mainly covers **fruit nuts and other edible parts of the plant** whereas said product is a fruit juice based drinks. The S.H.No.22029020 specifically covers 'Fruit pulp or fruit juice based drink'. I find that the name of the product itself and its ingredients shows it as a drink based on fruit juice and no mention or composition in respect of part of plant is there. Further S.H.No.22029020 covers non-alcoholic beverage and hence the product 'Lemon Juice/dressing' is properly classifiable therein. I find from para 2 of the show cause notice that the appellant has intimated to the department under letter dated 24.01.2017 regarding above change of classification made by them in respect of 'Lemon Juice/dressing' and under letter dated 17.11.2016 in respect of 'Beverage Concrete (instant drink powder)' without giving reasons for such change. They had further declared that said two products are new and they are planning to add it in their Central Excise Registration.

7. With respect to 'Beverage Concrete (instant drink powder)', I observe that the same are manufactured using the ingredients sucrose, critic acid, sodium citrates, natural and nature identical powder flower,



calcium phosphate, vitamin C(E300), sugar gum, sodiam carboxymethyl cellulose, approved artificial colors, vitamine A acetate, iron salt, folic acid, vitamine B12,, vitamine D and vitamine E etc. Combination of above makes a drink mix or a soft drink which is nothing but processed food otherwise known as soft drink. Heading 2106 of Central Excise Tariff Act,1985 specifically covers 'Food preparation' whereas Heading No 2008 claimed by the appellant covers **parts of plant** – fruit, nuts and other edible plants. Therefore, the product 'Beverage Concrete (instant drink powder) manufactured and cleared by the appellant is properly held classifiable under S.H.No.21069019 under the impugned order.

8. It is contested further that that Revenue neutrality of the issue has not been taken care. I find that in the present case differential duty pertains to goods cleared for export either under claim of rebate or under bond/UT1. Export of the goods is not under dispute. Therefore, so far as differential duty on goods cleared for export is concerned, the claim of the appellant on revenue neutrality of the issue deserves considerations. Relevant portion of case law on revenue neutrality are mentioned below in this regards;

1. Hon'ble CESTAT, West Zone, Mumbai; 2005(1008) ELT290(Tri-Mum) in case of Serene Labs v/s Commissioner C.Ex, Mumbai,

[Order per : Jyoti Balasundaram, Vice-President]. - The issue for determination in these appeals is correct classification of medicaments such as Ampicilin Injection BP and Gentamicin Injection BP - whether under CET sub-heading 3003.20 as generic medicaments as contended by the Revenue and held by the lower appellate authority, or under CET sub-heading 3003.10 as P or P medicaments which is the claim of the assesseees.

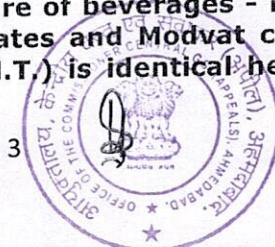
2. We have heard both sides.

3. We find that it is not necessary to give a finding on this issue for the purpose of disposal of these appeals. This is for the reason that **undisputedly the assesseees paid duty on the goods in question and then cleared them either for export or otherwise.** Therefore, they had rightly availed Modvat credit of the duty paid by them on the inputs and also taken rebate when the goods were exported. **The entire exercise was Revenue neutral. Therefore, without going into the correct classification of the products in dispute, we hold that the appeals are required to succeed.**

4. The appeals are thus allowed.

2. Hon,ble Apex court; 2007(213)ELT 490(SC) Commissioner of C Ex v/s Coca Cola India Pvt Ltd,

Classification of goods - Revenue neutrality - Classification of non-alcoholic beverage bases/concentrates manufactured by assessee which are supplied to bottlers, who in turn use the same as raw material in manufacture of beverages - Excise duty payable on beverage bases/concentrates and Modvat credit availed under Notification No. 5/94-C.E. (N.T.) is identical hence, consequences



of payment of excise duty after availing Modvat credit was revenue neutral - In view of such stand being taken by assessee, appeals dismissed leaving question of law open. [paras 6, 7]

Appeals dismissed

[Order]. - The Revenue has filed the present appeals against Order No. C-1/3873-74/00WZB, dated 13th October, 2000 in Appeal Nos. E/3926R/98-Bom & E/1042R/99-Bom. passed by the Customs, Excise and Gold (Control) Appellate Tribunal, West Zonal Bench, Mumbai [for short "the Tribunal"].

2. The Tribunal by the impugned order has set aside the order passed by the Commissioner (Appeals) and held that the "non-alcoholic beverage bases or concentrates" manufactured by the respondents are classifiable under sub-heading 10 of Chapter Heading 33.02, as has been claimed by the respondent-assessee.

3. M/s. Britoo Food Company Limited was a wholly owned subsidiary of Coca Cola Company which has changed its name to Coca Cola India Limited. The assessee filed an application for such change in its name, which was allowed.

4. Assessee is the manufacturers of, *inter alia*, their products, namely, 'Non-alcoholic beverages bases/concentrates', which the Assessee or their bottlers required for making beverages and aerated waters, and which, in turn, were sold by the bottlers under the name of Coca-Cola, Thumps Up, Gold Spot, Limca, Citra, etc.

5. The assessee in paragraph No. 3 of its counter-affidavit has stated, as under :

"3. The present appeal has no Revenue implication. The dispute relates to classification of beverage bases/concentrates manufactured by the Respondent, which are supplied to bottlers, who in turn use the same as raw material in the manufacture of beverages. The duty payable in respect of beverage basis/concentrates is modvatable. Since the duty payable by the Respondent is modvatable, there is no revenue implication. The issue of classification is therefore, academic. No purpose would be served by entertaining the present appeal."

(page 86 of the Paper book)

6. It is stated by the learned counsel for the assessee that the excise duty paid and the Modvat credit availed under Notification No. 5/94-C.E.(N.T.), dt. 1-3-1994 were identical and therefore consequences of payment of excise duty after availing Modvat credit was revenue neutral.

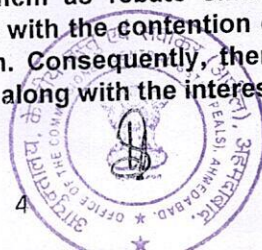
7. In view of the stand taken by the assessee in the counter-affidavit and the statement made by the learned counsel for the assessee, the appeals are dismissed leaving the question of law open. However, there shall be no order as to costs.

8. If upon verification, the submission of the counsel for the assessee is found to be incorrect, liberty is granted to the appellant-Revenue to mention the matter before this Court.

9. I Further rely on the decision by Hon'ble CESTAT, Principle Bench, New Delhi in case of VE Commercial Vehicles Ltd v/s Commissioner of Central Excise & Service Tax, Indor reported in 2018 (15) GSTL. 291(Tri-Del) wherein it is held that If differential duty paid, same to be available to assessee as rebate since goods have been exported, leading to revenue neutral situation - No justification for demand of duty. Relevant part of the same are as under:

18. The second issue in respect of MFTPL is that during the period June, 2008 to February, 2011, the MFTPL has exported chassis fitted with engines but they paid Excise duty only @ 10% under claim of rebate whereas the applicable Excise duty during the relevant time was 10% plus specific Excise duty @ Rs. 10,000/- per chassis. The adjudicating authority has confirmed the demand of differential duty along with interest and penalties. However, the appellant has claimed that any differential duty, if paid, will also be refundable to them as much as goods have been exported.

There is no dispute that the goods have been exported during the period Jupe, 2008 to February, 2011. Admittedly, there is a short payment of duty by the appellant, **However, the fact remains that if the differential duty is paid by the appellant the same will also be available to them as rebate since the goods have been exported. Consequently, we agree with the contention of the appellant that this leads to revenue neutral situation. Consequently, there is no justification for demand of duty which is set aside along with the interest and penalties.**



10. In view of the above discussions as well as following the decisions by higher forum under case laws, I observe that demand of differential duty involved on goods exported by the appellant is **revenue neutral** and hence I reject the impugned order in so far as it confirms differential duty on goods exported and upheld the findings in respect of classification part. I would also like to hold that since the appellant had already informed the department about change in their classification, therefore, no penalty can be imposed.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निषटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date:



Attested

(D.A. Parmar)
Superintendent,
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,

M/s. Surya international,
444/P, Ashwamegh Estate, Sarkhej-Bavla Highway,
Changodar, Ahmedabad

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-North.
4. The Asstt./Deputy Commissioner, Central Tax, Division-IV, Ahmedabad-North.
5. Guard File.
6. P.A.