

REGISTERED
SPEED POST



F.No.195/451/2011-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE
NEW DELHI-110 066

Date of Issue: 8/8/18

Order No. 519/2018-Cx dated 6-8-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-In-Appeal No.31-CE/MRT-II/2011 dated 31.1.2011 passed by the Commissioner of Customs & Central Excise (Appeals) Meerut-II

Applicant : M/s Hindustan Coca Cola Beverages Pvt. Ltd., Masuri-Gulaothi Road, Ghaziabad

Respondent : Commissioner of Central Excise, Meerut-II

ORDER

A Revision Application No.195/451/2011-RA dated 26.5.2011 is filed by M/s Hindustan Coca Cola Beverages Pvt. Ltd., Masuri-Gulaothi Road, Ghaziabad (hereinafter referred to as the applicant), against the Order-in-Appeal No.31-CE/MRT-II/2011 dated 31.1.2011, passed by the Commissioner of Central Excise (Appeals), Meerut-II, whereby the appeal of the applicant has been rejected and the Original Authority's Order confirming demand of central excise duty on loss of beverages within the factory premises has been upheld.

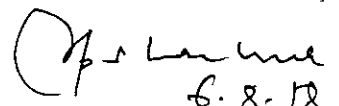
2. The brief facts of the case are that duty of central excise along with interest was demanded from the applicant on loss of finished goods due to breakage of beverage bottles and it was confirmed by the jurisdictional Assistant Commissioner vide his Order-in-Original No.70/ADDL.COMMR./M-II/2010 dated 04.10.10. The applicant's appeal against the said Order was also rejected by the Commissioner (Appeals) vide above mentioned Order-in-Appeal dated 31.1.11.

3. The revision application has been filed mainly on the grounds that their case is covered under CBEC's Circulars No.1D/3/70-CX.8 dated 8.9.1971 and No.261/1D/75-CX.8 dated 17.9.1975 as per which the production of beverages upto 0.5% was not required to be counted as manufactured, accordingly duty was not payable by them on the loss of beverage bottles upto 0.5%, request for remission of duty was not warranted in their case and the High Court of Allahabad has already decided this issue in their favour vide its Order dated 22.3.13 in their own appeal.

4. A personal hearing was held in this case on 17.5.18 and Shri Hamit Kumar Luthra, National Manager (Taxation), appeared for the applicant, who furnished written submissions dated 17.5.18 during the hearing which are almost reiteration of above mentioned grounds of revision. However, no one appeared for the respondent and no request for any other date of hearing is also received.

5. The Government has examined the matter and it is observed that the lower authorities have confirmed the demand of duty of central excise in respect of broken beverage bottles and loss of aerated water within the factory premises for the reason that the applicant did not seek remission of duty under Rule 21 of Central Excise Rules, 2002. However, the applicant's main case in the revision application is that the CBEC's above two Circulars exempted from payment of central excise duty upto the limit of 0.5% and accordingly they were not required to request for remission of duty in respect of such loss of goods each time under Rule 21. The Government fully agrees that the applicant was not required to pay any duty on loss of beverages upto the limit of 0.5% as per the above mentioned CBEC's two Circulars and consequently remission of duty under Rule 21 was not warranted. Moreover, this issue has already been examined by the Hon'ble High Court of Allahabad vide its Order dated 22.3.13 in reference to the Petition of the applicant itself and it has been categorically held that the applicant is entitled to exemption from duty to the extent of 0.5% of the beverages as per CBEC's Circulars dated 8.9.1971 and 17.9.1975 irrespective of the fact that the applicant had not claimed remission of excise duty either under Rule 21 of CER, 2002 or Rule 49 of Central Excise Act, 1944. Following the above High Court's Order, the Government of India has also held, vide its Order No.146/2018-Cx dated 1.3.18, in an earlier case involving this issue that applicant was not liable to pay duty of excise upto the limit of 0.5% loss of beverages in the light of above two circulars. Thus, the Order-in-Appeal upholding the demand of duty of excise from the applicant is undoubtedly erroneous and is liable to be set aside for the above reasons.

5. Accordingly, the Order-in-Appeal is set aside and the revision application is allowed.


6.8.18
(R.P.Sharma)

Additional Secretary to the Government of India

M/s Hindustan Coca Cola Beverages Pvt. Ltd.,
5th K.M. Stone, Masuri Gulaothi Road,
Ghaziabad, Uttar Pradesh

Order No. 579/2018-Cx dated 6-8-2018

Copy to:

1. Commissioner of Central Excise, Meerut-II (Now Noida-I), C-56/42, Renu Tower, Sector-62, Noida-201307
2. Commissioner of Custom & Central Excise (Appeals), Meerut-II, 126, Central Excise Building, Opp. Meerut University, Meerut
3. The Additional Commissioner, Central Excise Commissionerate, Meerut-II
4. PA to AS (RA)
5. Guard File.
6. Spare Copy

ATTESTED



(Ravi Prakash)
OSD (RA)