

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

REGIONAL BENCH - COURT NO.I

Excise Appeal No.52811 of 2015

(Arising out of Order-In-Appeal No.HPU-EXCUS-000-APPEALS-I-19-15-16 dated-23.04.2015 passed by Commissioner (Appeals-I) Central Excise, Meerut)

M/s Hindustan Coca Cola Beverages Pvt. Ltd.Appellant

(Kusum Hindipuram, Kotwali Road,
Najibabad, U.P. 246763)

VERSUS

Commissioner of Central Excise, Hapur (Meerut-II)

....Respondent

(Bhainsali Ground, Meerut (U.P.))

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant

Shri Manish Raj, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO. -70342/2024

DATE OF HEARING : 26.02.2024

DATE OF DECISION : 25.06.2024

P. K. CHOUDHARY:

The present appeal is arising out of Order-In-Appeal No.HPU-EXCUS-000-APPEALS-I-19-15-16 dated-23.04.2015 passed by Commissioner (Appeals-I) Central Excise, Meerut.

2. Brief facts of the case are that the Appellant, **M/s Hindustan Coca Cola Beverages Pvt. Ltd,** are engaged in the manufacture of aerated drinks and fruit pulp or fruit juice based drinks under different brand names, classifying them under Chapter 22 of the First Schedule to the Central Excise Tariff Act,

1985. The Appellant commenced the production of "**Minute Maid Nimbu Fresh**" (hereinafter referred to as the 'impugned product'), in pack size of 200ml, in returnable glass bottle on 19.03.2011 and classified the same under Tariff Heading 2202 9020, as fruit pulp or fruit juice drink. The Appellant was duly clearing the same @ 5% rate of duty.

3. A Show Cause Notice¹ dated 31.05.2013 was issued to the Appellant, proposing to recover Central Excise Duty payable on the impugned product, during the period April 2011 to August 2012, on the grounds that the Appellant has misclassified the product as fruit pulp or fruit juice drink under Chapter Sub-heading 22029020 instead of 'Lemonade' under Chapter Sub-heading 22021020 and have therefore, contravened various provisions of Central Excise Rules, 2002.

4. In the SCN it was alleged that the Appellant is required to pay duty @ 10% during the period 19.03.2011 to 16.03.2012 and @ 12% from 17.03.2012 onwards on the transaction value on the clearances of the impugned product by classifying the product under Chapter Sub-Heading 22021020. On the basis of the above, the Department calculated the duty liability of the Appellant, for the impugned period as follows:

Total Duty Payable as per SCN	Total Excise Duty Paid	Balance Duty payable as per SCN
Rs. 31,06,969/-	Rs. 14,04,320/-	Rs. 17,02,649/-

5. The SCN was adjudicated vide the Order-in-Original No. 45/ ADC/M-II/ 2014-15 dated 30.09.2014 passed by the Ld. Additional Commissioner, Central Excise, erstwhile Commissionerate, Meerut -II dated 30.09.2014 wherein the Ld. Additional Commissioner held that the impugned product is to be classified as 'Lemonade' and further confirmed the duty demand

¹ SCN

of Rs. 31,06,969/- with equivalent amount of penalty. Duty of Rs. 14,04,320/- paid by the Appellant was appropriated against the said demand and the balance duty of Rs. 17,02,649/- was confirmed alongwith interest on the same and further imposed a Penalty of Rs.31,06,969/- under Rule 25 of the Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944.

6. Such Order-in-Original dated 30.09.2014 was challenged before the Commissioner (Appeals). The Commissioner (Appeals) observed about the issue involved in the appeal as follows:

"From the facts of the case, I find that the main issue to be decided in the instant appeal is whether the product 'Minute Maid Nimbu Fresh' has rightly been classified by the adjudicating authority as 'Lemonade' under Chapter Sub-heading 22021020 of the First Schedule to the Central Excise Tariff Act, 1985. I observe that the appellant has put forth various pleas to substantiate that the impugned product was correctly classifiable under Chapter Sub-heading 22029020 as 'Fruit pulp or Fruit juice-based drinks' instead of 'Lemonade' under Chapter Sub-heading 22021020 of the First Schedule to the Central Excise Tariff Act, 1985."

7. The Ld. Commissioner (Appeals) relying on the Tribunal's decision in the case of **M/s Hindustan Coca-Cola Beverages Private Limited vs Commissioner of Central Excise Thane - I [2014 (310) E.L. T. 145 (Tri- Mumbai)]** passed the Order-in-Appeal dated 23.04.2015 upholding the aforesaid Order-in-Original, to the extent it confirmed the duty demand. However, with regards to imposition of penalty, the Ld. Commissioner (Appeals) reduced the quantum of penalty imposed to Rs. 17,02,649/-, on account of misclassification and disposed off the appeal filed by the Appellant.

8. Being aggrieved by the Order-in-Appeal, the Appellant filed the present appeal before the Tribunal.

9. Heard both the sides and perused the appeal records.

10. We find that the issue of classification of the impugned product is no more *res integra* as the same issue has been

settled in favour of the Appellant in Appellant's own case vide **Final Order No. A/85981-85983/2022 (Tri. Mumbai)** dated 12.10.2022 and by this Tribunal vide **Final Order No. 71423/2019** dated 19.07.2019. Both the orders relied on the decision by a **Larger Bench** of this Tribunal vide Miscellaneous Order No. 70132-70134/2019, dated 30.04.2019 [also reported as **2019 (29) G.S.T.L. 418 (Tri. - LB)**] which held that the product "Minute Maid Nimbu Fresh" is classifiable under Tariff Item 2202 90 20 of the Central Excise Tariff Schedule under the category of "fruit pulp or fruit juice based drinks". The Larger Bench did not agree with the decision in the matter of **M/s Hindustan Coca-Cola Beverages Private Limited vs Commissioner of Central Excise Thane - I [2014 (310) E.L.T. 145 (Tri- Mumbai)]**, on which reliance has been placed in the impugned order by the Commissioner (Appeals). The Larger Bench held as under :-

"64. The fruit juice content of lime or lemon juice in MMNF, Nimbu Masala Soda or Nimbooz has been indicated to be not less than 5% and the Total Soluble solids is also not less than 10%. All the three products namely MMNF, Nimbu Masala Soda and Nimbooz, satisfy the requirements of Regulation 2.3.10 or Regulation 2.3.30. These products, therefore, would classify under Tariff Item No. 2202 90 20 as fruit juice based drinks. The Mumbai Tribunal in Hindustan Coca Cola was, not justified in holding that the Regulations are not required to be examined.

65. The irresistible conclusion, therefore, that follows from both the common parlance test and the supporting legislation test is, therefore, that the three products MMNF, Nimbu Masala Soda and Nimbooz would classify under Tariff Item No. 2202 90 20 as fruit juice based drinks.

66. It can however be urged that even when lemon or lime juice is added to water as a flavoring agent, the product can still be called lemonade. Though it has to be seen whether the product is essentially waters with added flavour or whether lemon juice is the basis of the fruit drink, but the answer also lies in the definition of "non-carbonated ready to serve fruit beverages" under Regulation 2.3.10 and "carbonated fruit beverages and fruit drinks" under Regulation 2.3.30. It would follow from these Regulations that even when lime juice is added but the fruit content of lime or lemon juice is not less than 5%, the product would be classified as fruit juice based drinks but if the lime or

lemon juice content is less than 5%, then it would classify as lemonade.

67. Accordingly, the reference is answered as follows :

The product "Minute Maid Nimbu Fresh (hereinafter referred to as MMNF) manufactured by Brindavan Beverages Private Limited, and 7UP "Nimbooz Masala Soda" or 7UP "Nimbooz" manufactured by PepsiCo India Holdings Private Limited are classifiable under Tariff Item 2202 90 20 of the Central Excise Tariff Schedule under the category of "fruit pulp or fruit juice based drink"."

11. The above referred decision of the Larger Bench has been followed in the following matters:

- **M/s Varun Beverages Pvt. Ltd. v. Commissioner of Customs, Central Excise and Service Tax, Noida, Final Order No. 71374-71377/2019 (Tri. Allahabad)**
- **M/s Aradhana Foods and Juices Pvt. Ltd. v. Commissioner of Customs, Central Excise and Service Tax, Hyderabad-I, 2021 (10) TMI 528 (Tri. Hyderabad)**
- **M/s. Pepsico India Holdings Pvt. Ltd. v. Commissiner of Central Excise, Puducherry, 2020 (2) Tmi 288 (Tri. Chennai)**

12. In view of the above, the appeal filed by the Appellant is allowed with consequential relief, as per law.

(Pronounced in open court on 25.06.2024)

**(P. K. CHOUDHARY)
MEMBER (JUDICIAL)**

**(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**