

Commissioner of Central Excise Vs. Alankar Bottling Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-30-1998

Reported in : (1999)(105)ELT500TriDel

Appellant : Commissioner of Central Excise

Respondent : Alankar Bottling Co.

Judgement :

1. This is an appeal filed by the Revenue against the order of the Commissioner of Central Excise, Meerut, dropping the proceedings initiated under show cause notice dated 27-8-1993 against the respondents herein. The respondents are manufacturers of aerated waters under the brand name of Campa Cola, Campa Orange, Campa Tripp, Campa Lemon and Funday (Mango) falling under Chapter 22 of the Schedule to the CETA, 1985, under a franchise agreement with M/s. Campa Beverages (P) Ltd. who are the brand name owners. The premises of the respondents were searched on 28-6-1992 and certain documents were resumed from which it was revealed that during the period 15-5-1989 to 5-6-1992, the assessees had purchased 36 units of Campa Cola beverage base, 2 units of Campa Tripp beverages base from M/s. Campa Beverages P. Ltd. on excise gate passes; but the said quantity of beverage base had not been accounted for in the statutory raw material account viz. Form IV register. The sale of this quantity of beverage base was also confirmed by its manufacturer viz. M/s. Campa Beverages P. Ltd. The production of the aerated waters from the said 40 units was also shown in the statutory records, viz. RG1 register. The Department, therefore,

alleged that the aerated waters manufactured out of the 40 units of the concentrate received by the respondents were cleared without payment of duty. The excise duty evaded on the clandestine removal was worked out to be Rs. 2,34,112/- BED and Rs. 21,0967- SED. It was also found that the production of aerated waters was less than what it should have been in accordance with the specifications under the franchise agreement.

The Department, therefore, alleged that the production of 10,45,754 bottles of aerated waters was suppressed and the same were cleared without payment of duty, amounting to Rs. 6,58,451/- BED + Rs. 45,8417- SED. There were further allegations based upon the quantity of crown corks received by the respondents that there was further suppressed production of aerated waters. A show cause notice dated 27-8-1993 was, therefore, issued proposing recovery of duty of Rs. 9,59,5007- and proposing imposition of penalty for contravention of the relevant rules. The adjudicating authority considered the entire evidence placed before him by the assesseees and was satisfied that out of 5 gate passes covering 40 units of concentrates, receipt of concentrates shown against two gate passes, GP 1 No. 972, dated 21-2-1992 and GP 1 No.248, dated 5-6-1992, were accounted for in the statutory raw material account. Regarding the other 3 Gate Passes, he held that there was doubt regarding the receipt of the concentrates covered by these gate passes by the respondents. He also held that the defence of the assesseees that certain quantity of crown corks were destroyed was substantiated by Form IV register and RT 3 returns. Regarding non-accountal on the bases of the franchise agreement, he held that a case of suppressed production cannot be made out only on the basis of formula contained in the agreement. He, therefore, dropped the proceedings. Hence this appeal.

2. We have heard Shri Sanjiv Srivastava, learned DR and Shri Alok Arora, learned Counsel.' 3. We have carefully gone through the impugned order and find that the adjudicating authority has considered all the material on record regarding the issue of receipt of concentrates by the respondents. He has accepted that the goods covered by two out of the 5 GP Is have been separately accounted for. This leaves us with their explanation regarding 26 units of concentrates. The Collector has found on the basis of the cross-examination of the representatives of M/s. Campa

Beverages P. Ltd., who are suppliers of the concentrates, that the allegation of non-accountal of the concentrates does not stand proved particularly when the respondents were receiving different types of concentrates viz., mango concentrates on submission of C forms and availing of concessional rate of sales tax and there would be no plausible reason for the assesseees to clear anything clandestinely when they could have availed of the concessional rate of sales tax for the concentrates in question also. The Collector has gone by an affidavit of one Iqbal Ahmed, manufacturer of aerated waters, who has stated on oath that he used to purchase concentrates from Rakesh Kumar during the period 1989 to 1992. Rakesh Kumar is an employee in the factory of the respondents. The Collector has gone by preponderance of probabilities in holding that the concentrates covered by GP 1 Nos. 284, 483 and 594 have not been satisfactorily explained to have been received in the respondents' unit and, therefore, the question of their having manufactured aerated waters out of this quantity of concentrates and removing them without payment of duty does not arise.

4. The learned DR has not been able to satisfy us that this finding of the adjudicating authority which is based on a number of factors and upon examination of the evidence on record should be dislodged and a finding that the respondents did actually received the concentrates and manufactured and cleared clandestinely aerated waters manufactured therefrom should be rendered. The second issue relates to the respondents having manufactured and suppressed production based upon the franchise agreement entered into between them and M/s. Campa Beverages P. Ltd. The finding of the adjudicating authority is that the yield contained in the franchise agreement is an ideal formula or the formula is for ideal condition that there is no proof that the formula was actually adopted and carried out to result in manufacture of 10,000 standard size bottles of the finished beverages out of a particular number of units of beverages base. The Collector has held that the excess production of the relevant period has been fully explained stating that there have been clerical mistake in sales figures shown in the RG1 register which has also been corroborated by M/s. Campa Beverages P. Ltd., that the discrepancy in the receipt and disposal/destruction of crown corks is clearly reflected in the Form-IV register and RT 3 returns submitted for scrutiny by the Department. He has held that the allegation of clandestine removal and

suppressed production are not proved on the basis of the material placed before him. The Department has not been able to make out a case that there is something illegal or perverse in the finding to persuade us to take a different view other than the one taken by the adjudicating authority.

In the face of the fact that the authorities below has passed a detailed order considering every single piece of evidence and in view of the fact that the respondents have satisfactorily explained the entire case, we are not satisfied that there is any warrant for our interference with the impugned order with which we agree and accordingly, we uphold the order of the Collector of Central Excise and reject the appeal. The CO abates.

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