

Pure Drinks (New Delhi) Ltd. Vs. Cce

Pure Drinks (New Delhi) Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/15744

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-06-1999

Reported in : (1999)(85)LC802Tri(Delhi)

Judge : J Balasundaram, S T G.R.

Appellant : Pure Drinks (New Delhi) Ltd.

Respondent : Cce

Judgement :

1. The above appeals have been filed against separate adjudication orders passed by the Commissioner of Central Excise, New Delhi, denying Modvat credit of Rs. 71,06,112/- on glass bottles used in relation to the manufacture of aerated waters and imposing a penalty of Rs. 9 lakhs on the appellants herein. The period in dispute is March 1995 to June 1995 and July 1995 to October 1995.

2. None appeared for the appellants when the case was called in spite of today's date having been given in the presence of their Counsel; hence we heard Shri L.P. Asthana, learned Counsel for the Revenue and perused the records.Delhi Bottling Co.

v. Collector of Central Excise, Chandigarh that Modvat credit is available on glass bottles used in the manufacture of aerated waters wherever the cost of bottles is included in the cost of aerated waters. The period in dispute in that case was subsequent to 1.3.1994 when duty was on aerated waters became ad valorem. In

coming to its conclusion, the Tribunal relied upon its earlier order in the case of Black Diamond Beverages Ltd. v. CCE . The relevant paragraphs from the Black Diamond Beverages case are reproduced below: 7.1.1. We have carefully considered the pleas advanced from both sides. We shall first deal with the effect of Section 4(4)(d)(i), if any, in view of the language of Clause (iii) of Explanation to Rule 57A. Relevant portion of that Clause during the relevant period read as follows: (iii) packaging materials the cost of which is not included or had not been included during the preceding financial year in the assessable value of the final products under Section 4 of the Act.

Commissioner (Appeals) in the impugned order dated 28.6.1996 has been read it in a different manner namely, "cost of which is not (liable to be) included under Section 4 of the Act". Words mentioned in the bracket above are proposed to be added by the learned Commissioner (Appeals) while construing the said clause. This is not permissible. Violence to the language of a legal provision by way of addition to or subtraction from, or substitution in lieu of the existing expression is permissible only if the existing expression is not workable and leads to anomalies. There is no such situation in the existing Clause (ii) of the Explanation to Rule 57A. 7.1.4. For the sake of an argument, even if cost of a packing is not liable to be included in the assessable value of goods in terms of Section 4, it is the option of the manufacturer to include the same in the assessable value of the final product and claim modvat credit of duty paid on such packing in terms of Rule 57A. When modvat scheme was brought in 1986, Section 4 was already in existence. It was clear from Section 4 that cost of packing of durable nature and returnable to the assessee is not includible or is not liable to be included, yet Clause (iii) of Explanation to Rule 57A employs the words as it does. If the intention was simply to exclude the costs of durable and returnable packing, nothing would have been simpler than to make such packing alone an exception in the exclusion Clause (iii) and impliedly include all other packing.

Obviously, that not being the intention the present words in Clause (iii) have to be given their plain meaning. Learned SDR's reliance on MRF (supra) is not at all relevant because the Apex Court has not considered Rule 57A at all.

7.1.5 Viewed in the light of the foregoing discussion, Board's Circular dated 13.9.1995 correctly interprets the provisions of Rule 57A, apart from the fact that it would have been binding on the authorities below, even if it had been erroneous.

7.2 Next question is as to what cost in respect of durable and returnable packing is to be included? Cost of an article which is repeatedly used for several times before it is exhausted has to be necessarily arrived at on pro rata basis for a single use depending upon the no. of uses to which it is put generally. That is a standard costing practice and duly certified by a Chartered Accountant. To adopt any other method would be an impractical proposition and would lead to ridiculous results. If the cost of an input in its first use in a final product is fully reflected, the value of the final product in which an input is used for the first time would be exceptionally high, whereas the final product utilising that input on the latter's second or subsequent use would have a very low value because second or subsequent use of such an input would be without any cost inasmuch as its full cost has already been exhausted on its first use. Same batch of final product would have different costs/values depending upon the first use or subsequent use of an input in a batch of final products. It will create problems of segregation of inputs and many other consequential problem. Certainly an impractical result.

4. In the cases before us, the material on records is not sufficient to categorically conclude that the cost of the packing material was included in the cost of the aerated waters. Hence, we set aside the impugned orders and remand the matter to the jurisdictional Commissioner for verification of the factual position regarding inclusion of the cost of packing material in the cost of aerated waters. If he is satisfied on such verification, that the cost has been included and that duty has been paid thereon, credit shall be extended to the assesseees.

5. He shall pass fresh orders after extending to the appellants a reasonable opportunity of being heard in their defence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com