

Devyani Beverages Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-11-1999

Reported in : (1999)(113)ELT503TriDel

Appellant : Devyani Beverages Ltd.

Respondent : Collector of Central Excise

Judgement :

1. By the impugned order, the Commissioner of Central Excise (Appeals), Ghaziabad has disallowed Modvat credit of Rs. 33,53,668.68 on decorated glass bottles used by the appellants herein who are manufacturers of aerated waters, on the ground that they are not capital goods under Rule 57Q, and credit is not available under Rule 57A since they did not file a declaration under Rule 57G.2. On hearing Shri M.A. Rangaswamy, learned Counsel and Shri Sanjeev Srivastava, learned DR, we agree with the learned Counsel that the declaration filed by the appellants in terms of Rule 57Q is sufficient for the purpose of extending credit on glass bottles which are inputs within the meaning of Rule 57A, and since it has been verified by the Assistant Collector that the value of glass bottles has been included in the assessable value of the final product, credit has to be held to be available wherever the cost of packing material is included in the assessable value, having regard to the language of the Explanation Clause (iii) under Rule 57A which provides that the "inputs do not include packaging material 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", and to the case of Delhi Bottling Co. v. C.C.E., Chandigarh reported in 1999 (105) E.L.T. 42. This decision was for the period after 1-3-1994 when duty on aerated waters became ad valorem. We over-rule the objection of the learned DR that the costing data provided by the assesseees to the Assistant Collector on the basis of which he has confirmed that the value of the glass bottles has been included in the assessable value of aerated waters is not sufficient to hold that the cost of the bottles has been included in the assessable value, in view of the clear finding of the Assistant Collector on this factual aspect.

3. Following the ratio of the Tribunal's, decision cited supra, and taking into account the above finding of the Assistant Collector, we hold that the appellants are entitled to credit on glass bottles used for bottling of aerated waters. Regarding denial of Rs. 62,346.24 by the Assistant Collector on tiles/ceramic goods and Rs. 46,432.80 on powder syrup and hardener, the Assistant Collector's order has become final since the assesseees have not filed any appeal against the Assistant Collector's order [the appeal before the Commissioner (Appeals) was filed by the Revenue against the extension of credit by the Assistant Collector on glass bottles]. We, therefore, hold that credit is not available on tiles/ceramic goods and powder syrup and hardener.

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