

REGISTERED
SPEED POST



F.No.198/01/2013-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:

Order No. 146/2018-Cx dated 01-03-18 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 Orders-In-Appeal No.239-CE/MRT-II/2010 dated 23.7.2010 passed by the Commissioner of Customs & Central Excise (Appeals) Meerut-II

Applicant : Commissioner of Central Excise, Meerut-II

Respondent : M/s Hindustan Coca Cola Beverages Pvt. Ltd., Ghaziabad

ORDER

A Revision Application No.198/01/2013-RA dated 22.1.2013 is filed by the Commissioner of Central Excise, Meerut-II (hereinafter referred to as the applicant), against the Orders-In-Appeal No.239-CE/MRT-II/2010 dated 23.7.2010, passed by the Commissioner of Central Excise (Appeals), Meerut, whereby the demand of duty against the respondent M/s Hindustan Coca Cola Beverages Pvt. Ltd., on the loss of goods is upheld but penalty imposed on the respondent under Section 11AC of the Central Excise Act is set aside.

2. The brief facts leading to the present revision application are that duty of central excise along with interest was demanded from the respondent on loss of finished goods due to breakage of areated water bottles and it was confirmed by the jurisdictional Assistant Commissioner vide his Order dated 26.2.10 against which an appeal was filed by the respondent before the Commissioner (Appeals) who also upheld the demand of duty along with interest but waived the penalty on the respondent on the ground that no ingredient of suppression of facts as given in Section 11AC is established. While the respondent filed a revision application before the Government challenging the Commissioner (Appeals)'s Order regarding upholding of demand of duty from them, the Department filed an appeal before the CESTAT against the Order of the Commissioner (Appeals) dropping the penalty on the respondent under Section 11AC. The revision application filed before the Government challenging demand of duty was rejected by the Joint Secretary (RA) vide his Order No.881/12-Cx dated 7.8.12 and the appeal of the department before the CESTAT was dismissed as not maintainable with a direction to file the revision application before the Government only on the point of penalty also in this case. Consequently, the present revision application is filed before the Government with a request to set aside the OIA with regard to waiver of penalty on the respondent. The respondent has contested the revision application vide their letter

dated 31st March 2013 by stating that they had filed a Writ Petition No.147 of 2013 against the Order dated 8.8.12 of the Joint Secretary upholding the Order of Commissioner (Appeals) regarding demand of duty from them and the same has been allowed vide Order dated 22nd March 2013 holding that they are entitled to exemption to the extent of loss of 0.5% of the excisable goods manufactured by them in pursuance to the CBEC's Circulars dated 8.9.71 and 17.9.75.

3. A personal hearing was held in this case on 22.2.18 and Shri Hamit Kumar Luthra, National Manager (Taxation), appeared for the respondent. However, no one appeared for the applicant and no request for any other date of hearing is also received. Shri Luthra mainly pleaded that since the Order of the JS(RA) regarding demand of duty itself has been set aside by the Allahabad High Court vide Order dated 22.3.18 penalty on the respondent is not sustainable at all.

4. On examination of the revision application, it is noticed by the Government at the outset that the revision application has been filed on 22.1.13 after more than 2½ years from receipt of the Order of Commissioner (Appeals) on 4.8.10. But still no application for condonation of delay has been filed by the applicant. In fact even the revision application is filed after 2½ months of dismissal of the departmental appeal by the CESTAT and no explanation has been given for taking so much time even after the CESTAT's Order dated 5.11.12. Thus the revision application filed in this case is time barred in the light of Section 35EE of the Central Excise Act as per which a revision application can be filed within 3 months of communication of the Commissioner (Appeals)'s Order. Further, on merit also it is not found maintainable as the demand of duty has been set aside and the Orders of the Assistant Commissioner, Commissioner (Appeals) and the JS (RA) regarding demand of duty have been quashed by the Hon'ble High Court of Allahabad vide its Order dated 22.3.13.

5. Accordingly, the revision application filed by the Commissioner of Central Excise is rejected.

(R.P.Sharma)
1.3.18

(R.P.Sharma)

Additional Secretary to the Government of India

Commissioner of Central Excise,
Meerut-II (Now Noida-I),
C-56/42, Renue Tower, Sector-62
Noida-201307

Order No. 146/2018-Cx dated 01-03-2018

Copy to:

1. M/s Hindustan Coca Cola Beverages Pvt. Ltd., Masoori Gulawathi Road, Delhi-Hapur Road, Disst. Ghaziabad
2. Commissioner of Custom & Central Excise (Appeals), Meerut-II
3. The Additional Commissioner, Customs & Central Excise, Commissionerate Meerut-II
4. PA to AS(RA)
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED

(Debjit Banerjee)
1.3.2018

(Debjit Banerjee)
STO (RA)