

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.1

Excise Appeal No. 11178 of 2018-SM

(Arising out of Order in Appeal VAD-EXCUS-002-APP-753-2017-18 Dated 27/12/2017 passed by the Commissioner(Appeals), Central GST & Central Excise-Vadodara)

Pepsico India Holding Pvt Ltd

Plot No. 27, GIDC Jhagadia,
Jhagadia Industrial Estate,
Distt. Bharuch, Gujarat - 393110

.....Appellant

VERSUS

**COMMISSIONER OF CGST &
CENTRAL EXCISE- Vadodara II**

GST Bhavan, Arkee Garba Ground,
Nr. Telephone Exchange, Subhanpura,
Vadodara-390023, Gujarat

.....Respondent

APPEARANCE:

Shri Ishan Bhatt and Shri Amber Kumrawat, Advocates appeared for the Appellant
Shri Sarjeet Kumar, Superintendent (AR) appeared for the Respondent

CORAM:

HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 10333/2026

DATE OF HEARING :06.05.2026
DATE OF DECISION: 08.05.2026

S. S. GARG

1. The present appeal is directed against the impugned order dated 27.12.2017 passed by the learned Commissioner (Appeals), GST & Central Excise, Vadodara whereby, the learned Commissioner has confirmed the demand of duty amounting to Rs.4,94,549/- along with interest and penalty. Briefly, the facts of the present case are that the appellant is a private limited company inter alia engaged in the manufacture of aerated water, soda, packaged drinking water and fruit juice-based drinks falling under Chapter 22 of the First Schedule to the Central Excise Tariff Act, 1985.

1.1 The Union Government in Budget 2014 vide Clause 110 read with Ninth Schedule to the Finance Bill, 2014, proposed to amend the Seventh Schedule of the Finance Act, 2005 to introduce levy of Additional Excise Duty (AED) on aerated waters of Chapter Sub-heading 2202 10.

1.2 W.e.f. 11.07.2014, the proposal under Clause 110 of the Finance Bill, 2014 was implemented vide Section 118 read with Ninth Schedule to the Finance Act, 2014. By way of this amendment, a new entry was inserted into the Seventh Schedule of the Finance Act, 2005 with the following description:

Tariff Item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
2202 10	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured	I	5%

1.3 Since the Seventh Schedule of the Finance Act, 2005 covers the goods which are liable to AED, the above goods manufactured by the appellant also became liable to AED from 11.07.2014.

1.4 The appellant vide letter dated 11.07.2014 intimated the Department that goods manufactured and cleared after 11.07.2014 would be subject to AED @ 5% but the goods already manufactured and lying in stock on the midnight of 10.07.2014 would not be subject to AED at the time of clearance. Along with such letter, the appellant also intimated the quantity of goods lying in stock as of midnight of 10.07.2014 on which AED would not be payable.

1.5 In response, the Department vide letter dated 21.07.2014 requested the appellant to pay AED on the pre-budget stock and submit proof of payment.

1.6 Since the department entertained the view that the appellant is liable to pay the excise duty on the clearance made on or after 11.07.2014. A show cause notice dated 18.03.2015 was issued to the appellant proposing to demand AED of Rs.4,94,549/- (including cess) on the goods lying in stock as on 11.07.2014 and already manufactured prior to 11.07.2014, along with interest and penalty.

1.7 Appellant filed reply to the show cause notice and contested the demand on various ground thereafter; by following the due process, the Additional Commissioner(A) confirmed the demand by it's order dated 27.02.2017. Aggrieved by the said order, the appellant filed appeal before the Commissioner who upheld the Order-in-Original and rejected the appeal of the appellant. Hence, the present appeal.

2. Heard both the parties and perused the material on record. Learned Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and law and binding the judicial precedents on the same issue. He further submits that the issue involved in the present case is no longer res-integra

and has been settled in the appellant's own case and also in the case of similarly placed appellants, following the ratio laid down by the Hon'ble Supreme Court in the case of CCE Hyderabad Vs. Vazir Sultan Tobacco Co. reported in 1996 (83) ELT 3 (SC) and Circular No. 334/1/2003-TRU dated 28.02.2003 and F. No. 345/2/2004-TRU dated 10.08.2004. He further submits that in the case of the appellant itself the demand has been dropped by various Departmental Authorities across the country. The demand proposal has been dropped by the respective Adjudicating Authorities vide the following Orders-in-Original:-

- Order-in-Original No. 29/CE/ADC/YM/SNP/2016-17 dated 21.09.2016 passed by Additional Commissioner of Central Excise, Delhi- III (Sonepat),
- Order-in-Original No. 80/2016-CE dated 29.07.2016 passed by Additional Commissioner of Central Excise, Hyderabad,
- Order-in-Original No. 51/2016-CE dated 30.11.2016 passed by Ld. Assistant Commissioner of Central Excise, Palakkad

2.1 Learned Counsel further submits that that these orders passed by various lower authorities in appellant's own case has been accepted by the department and has not appealed against. Therefore, he has prayed that the demand may be dropped. He also submits that in the case of one of the franchisees of the appellant, M/s Varun Beverages Ltd. v. CCE, Lucknow reported in 2023 (11) TMI 145 wherein, Division Bench of CESTAT Allahabad relied upon the judgment of Hon'ble Supreme Court in the case of CCE, Hyderabad v. Vazir Sultan Tobacco Co. reported in 1996 (83) ELT 3 (SC) and decided the identical issue in favour of the assessee.

3. On the other hand, learned AR reiterated the findings of the impugned order.

4. I have considered the submissions made by both the parties and perused the material on record as well as decision relied upon by the both the sides.

4.1 The only issue involved in the present case is whether Additional Excise Duty (AED) is leviable on goods already manufactured and lying in stock prior to 11.07.2014 but cleared after 11.07.2014, when, AED was levied on the goods w.e.f. 11.07.2014 ? Further, I find that in the appellant's own case, the department has decided the issue in favour of the appellant vide the following orders:-

- Order-in-Original No. 29/CE/ADC/YM/SNP/2016-17 dated 21.09.2016 passed by Additional Commissioner of Central Excise, Delhi- III (Sonapat),
- Order-in-Original No. 80/2016-CE dated 29.07.2016 passed by Additional Commissioner of Central Excise, Hyderabad,
- Order-in-Original No. 51/2016-CE dated 30.11.2016 passed by Ld. Assistant Commissioner of Central Excise, Palakkad

4.2 I also find that these orders have been accepted by the department and has not appealed against. Further I find that in these orders passed by the Adjudicating Authorities, they have mainly relied upon the decisions in the case of Vazir Sultan Tobacco Co. (cited supra). Further, I find that recently Division Bench of CESTAT Allahabad has also considered the identical issue in the case of one of the franchisees of the appellant i.e. M/s Varun Beverages Ltd. v. CCE, Lucknow (cited supra) wherein, also the Tribunal dropped the demand raised by the department and has observed as under:-

"The Finance Act 2014 introduced an additional duty of Excise ("AED") on waters including mineral water and aerated waters containing sugar or other sweetening matter falling under chapter heading 220210. The changes in the Finance Act 2005 were announced on 10.7.2014 and it was understood by the Appellant that the same shall be effective from midnight 10/11 July 2014. It is relevant to mention that the declaration under Provisional Collection of Taxes Act, 1931 provided that clause 110 of the Bill shall have immediate effect under the Provisional Collection of Taxes Act, 1931.

8. We find that the issue is no longer res-integra and is settled by the judgment of Hon'ble Supreme Court in the case of CCE, Hyderabad Vs. Vazir Sultan Tobacco Company Ltd reported in 1996 (83) ELT 3 (SC). *The Hon'ble Supreme Court while dealing with special duty of excise has held that "**Section 3 cannot be read as shifting the levy from the stage of manufacture or production of goods to the stage of removal. The levy is and remains upon the manufacture or production alone. Only the collection part of it is shifted to the stage of removal.** Once this is so, the fact that the provisions of the Central Excise Act are applied in the matter of levy and collection of special excise duty cannot and does not mean that wherever the Central Excise duty is payable, the special excise duty is also payable automatically. That is so as an ordinary rule. But insofar as the goods manufactured or produced prior to March 1, 1978 are concerned, the said rule cannot apply for the reason that there was no levy of special excise duty on such goods at the stage and at the time of their manufacture/production. The removal of goods is not the taxable event. Taxable event is the manufacture or production of goods." That CCE, Hyderabad Vs. Vazir Sultan Tobacco Company reiterates a settled position that duty of excise is leviable on 'manufacture' or production of the goods as contemplated by Entry 84 of List-1 of the Seventh Schedule to the Constitution. The mere fact that, for the sake of convenience, the duty is collected at the stage of removal cannot and does not change the character of the tax. It is upon the manufacture or production of goods and not on any other basis. **Once the levy is not there at the time when the goods are manufactured or produced, it cannot be levied at the stage of removal of the said goods. The idea of collection at the stage of removal is devised for the sake of convenience. It is not as if the levy is at the stage of***

removal; it is only the collection that is done at the stage of removal.

9. In view of the above discussions and findings the impugned order cannot be sustained and the same is accordingly set aside"

(Emphasis supplied)

4.3 Since, the department has accepted the earlier orders in favour of the appellant and has not filed any appeal, therefore, now the department is prevented from taking a contrary stand today in view of the various judgments cited as under :-

- Jayaswals Neco Ltd. v. CCE, Nagpur – 2006 (195) ELT 142 (SC)
- Birla Corporation Ltd. v. CCE – 2005 (186) ELT 266 (SC)
- Indian Oil Corporation Ltd. v. CCE, Baroda – 2006 (202) ELT 37 (SC)

5. Considering the totality of the circumstances and the ratio of the decisions cited supra, I am of the considered view that the impugned order is not sustainable in law and therefore, I set aside the same by allowing the appeal of the appellant with consequential relief if any in accordance with law.

(Pronounced in the open court on 08.05.2026)

(S. S. GARG)
MEMBER (JUDICIAL)