

We have heard the learned Counsel and perused the record. The relevant questions proposed in one of the Reference Applications reads as under;

- I. Whether in view of the fact that the Applicant does not have any franchise / royalty agreement / arrangement with PepsiCo Inc, USA, nor has it ever paid or remitted any amount on account of franchise fee or royalty to any party, it is not liable to pay federal excise duty on franchise fee / royalty?
- II. Whether on the facts and circumstances of the case, the learned Appellate Tribunal and the fora below have erred in law as well as misconstrued facts and drawn incorrect inferences from the facts by holding the Applicant liable to pay federal excise duty on franchise fee?"

On perusal of the record including the order of the Hon'ble Supreme Court as above, it appears that the controversy as raised in this matter already stands decided in the following manner; -

"3. After hearing the learned counsel for the parties and going through the impugned judgments, it is clear to us that the Commissioner Inland Revenue has proceeded on some assumptions and those too, not well founded. There is nothing on record to show that the respondent pays for services either to Pepsi Cola International (Pvt) Ltd. Hattar which is a Pakistani incorporated company or to Pepsico, Inc. USA which is a company incorporated in America. In the absence of such payments, there is no question of any amount being payable by way of excise duty for 'services' rendered.

3. The mere fact that the respondent purchases concentrate from PCI, Hattar and then bottles the same under a formula provided by Pepsico, Inc. USA does not attract the charging provisions of the Excise Act. It is also important to bear in mind that the respondent is obliged to label the bottled water with the trademark/logo of Pepsi Cola because if this is not done there will be a misdescription of the product under the Trademarks Act. It is also relevant that the respondent pays excise duty on the concentrate which it purchases from PCI. Hattar and it also pays excise duty on each bottle of bottled drink produced by it. We fail to understand how, after such duty has been paid at the point of purchase from PCI, Hattar and the point of manufacture, the respondent is still obliged to make payment of some excise duty for any imaginary services provided or rendered by the respondent.

4. In view of the foregoing discussion, we find no merit in these petitions. The same are, therefore, with costs and leave to appeal is declined."

From perusal of the aforesaid order and the record placed before us, including the facts as pleaded and determined, there is nothing on record to substantiate the claim of the Respondents as to payment of any Royalty or Franchise Fee to the Principal abroad as alleged. In fact, the learned Tribunals order appears to be based on conjectures, surmises and is presumptive. Identical controversy was involved in the aforesaid case before the Hon'ble Supreme Court which had originated from the

Peshawar Jurisdiction of the Tribunal, whereby, the Appeals of the Tax-payers were allowed; against which the Departments Reference Applications were also dismissed by learned Peshawar High Court and thereafter, such order was also maintained by the Supreme Court. The learned High Court had observed that for charging excise duty between a franchiser and a franchisee, there has to be an identifiable link as to rendering of any services against a fee. While maintaining the said judgment of the learned Peshawar High Court, it has been observed by the Hon'ble Supreme Court that mere purchase of concentrate from a local company (i.e. Lahore in this case), and then bottling of the same under a formula provided by Pepsico, Inc. U.S.A., does not attract the charging provisions of the Federal Excise Act, whereas, no excise duty can be demanded on any imaginary services provided or rendered. It is also not in dispute that insofar as bottling is concerned, the duty is being paid at final production and the issue is in respect only of the concentrate being used by the present Applicant being purchased locally.

After going through the record of the case in hand as well as the above observations of the Hon'ble Supreme Court, no exception can be drawn. Accordingly, the proposed questions of law as above are answered in favour of the Applicant and against the Respondents. As a consequence, thereof, these Reference Applications are allowed and the impugned orders of the Tribunal and the forums below stands set-aside. Office to place copy of this order in above connected Reference Applications.

Let copy of this order be sent to the Tribunal in terms of Section 34A(5) of the Federal Excise Act, 2005.

J U D G E

J U D G E

Arshad/