IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/71008-71013/2018-EX[DB]

(Arising out of Order-in-Original No. 174-179-CE/APPL/KNP/ADG-NACIN/2017-18 dated 20/04/2018 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

Commissioner of Central Excise & S.T., Kanpur **Appellant**

Vs.

Pahladrai Confectioneries Pvt. Ltd., Naman Mandhyan Partner,

Marko Foods, Mohit Vaid Director,

Naman Mandhyan Partner &

Marko Foods, **Respondents**

Appearance:

Shri Pawan Kumar Singh, Supdt (AR) for Appellant
Absent on call, for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 14/02/2019
Date of Decision : 14/02/2019

FINAL ORDER NOS-**70304-70309 / 2019**

Per: Archana Wadhwa

Being aggrieved with the order passed by Commissioner (Appeals) revenue has preferred the present appeals. As all the appeals have the same disputed issue, they are being disposed of by a common order. Accordingly, we have heard Shri Pawan Kumar Singh, learned A.R. appearing for revenue. Nobody appeared for the respondents.

2. On going through the records, we note that the respondents were engaged in the manufacture of “2-in-1 Eclairs” “Kismi Tofee” and “Kismi Toffee Bars”. The same were being classified by them under Sub-heading 1704 90 20 and were being cleared by availing the exemption in terms of Notification No.12/2012-CE dated 17.03.2012.

Revenue by entertaining a view that the proper classification of the said product is under Sub-heading 17049 030, which are attracted to duty of excise under the provisions of Section 4A of Central Excise Act, 1944, initiated proceedings against them proposing confirmation of differential demand of duty, as also for imposition of penalties. Show cause notices issued to the respondents, culminated into orders passed by the Original Adjudicating Authority. However, on appeal Commissioner (Appeals) by referring to the test report held that the goods cannot be held classifiable under Chapter Heading 17049030 and the same are properly classifiable under heading 17049020 as ‘Boiled Sweets’ and had discharged their duty liability correctly. Accordingly, he set aside the orders of Original Adjudicating Authority. Hence the present appeals by revenue.

3. We find that the issue is no more res-integra and stands settled by the Tribunal’s decision in the same assessee’s case reported as M/s Marko Foods & M/s Pahladrai Confectionaries Pvt. Ltd. vide Final Order Nos.71631-

71634/2018 dated 24.07.2018. The Tribunal has held that the appellant's products i.e. "Parle 2-in-1 Eclairs", "Kismi Toffee" and "Kismi Toffee Bars" are classifiable under the heading adopted by the assessee's and are entitled to benefit of Notification No.12/2012-CE dated 17.03.2012. Accordingly, Tribunal set aside the demands confirmed in those cases by observing as under:-

> "5. On the basis of the arguments advanced by both sides before us, we find that the test report has been obtained. As the per the test report, the ingredients of the said goods namely sugar, edible oil and emulsifier etc. concerning of full white colour several matters mainly presence of fat and protein emulsifier etc., each white chocolate preparation which does not necessary positive test of Theobromina (does not confirmed presence of cocoa) having following characters Fat content 8%). On the basis of test report, it was held that the goods in question do qualify as white chocolate by the authorities below, but as per the chapter 17-HSN explanatory note „white chocolate‟ which means white chocolate composed of Sugar, Cocoa butter, Milk powder and Flavouring agents, but not containing more than mere traces of cocoa (cocoa butter is not regarded as cocoa). From the said definition, it is clear that white chocolate should contain „cocoa butter‟. As per the test report, it is clear that the sample does not contain any cocoa butter and white chocolate requires fat content of 25% as per the Food Safety & Standards (Food Products Standard & Food Additives) Regulations, 2011 whereas the fat content in the goods in question is 8% only. Therefore, from the test report it can be said that the goods in question are not white chocolate. Therefore, the said item do qualify for exemption as per the Notification No.03/2006-CE dated 01/03/2006 (Sr.No.16), also Notification No.12/2012-CE dated 17/03/2012 (Sr.No.19), which explains that items falling under Chapter 170490 are entitled for exemption under Sugar Confectionary (excluding white chocolate and bubble gum). Admittedly, the goods manufactured by the appellants are Sugar Confectionary is neither chocolate nor bubble gum. Therefore, the appellants are entitled to pay concessional rate of duty as allowed by the above cited Notifications."

4. Inasmuch as, the issue stands decided in the same assessee's case, we find no merits in the revenue's appeals. The same are accordingly rejected.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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