IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/1422 - 1428 & 1431/2011-EX[DB]

(Arising out of Order-in-Appeal No. 53-59/CE/ALLD/2011 dated 31/03/2011 & Order-in-Appeal No. 52/CE/ALLD/2011 dated 31/03/2011 passed by Commissioner of Central Excise (Appeals), Allahabad)

M/s Balaji Bakers Pvt. Ltd. **Appellant (s)**

Vs.

Commissioner of Central Excise, Allahabad **Respondent (s)**

Appearance:

Shri Jatin Mahajan (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 09/11/2017
Date of Decision : 09/11/2017

FINAL ORDER NOs. - **72343-72350/2018**

Per: Anil Choudhary

The above stated appeals are arising out of five impugned Orders-in-Appeal detailed in chart below and having a common issue. Therefore, they are taken up together for disposal.

S. No.	Appeal No.	Party Name	Order-in-Appeal	Order-in-Original	SCN dated	Period	Amount
1.	E/1428/2011	Balaji Bakers Pvt. Ltd.	53-59/CE/ALLD-2011 Dated 31.03.2011	45(MP)2010 Dated 31.08.2010	25.08.2009	Aug 08 to Sep 08	D - 4,26,724/- P – 4,26,724/-
2.	E/1422/2011	Do	Do	49(MP)2010 Dated 16.09.2010	14.10.2009	Oct 08 TP Nov 08	D – 3,59,084/- P – 3,59,084/-

3.	E/1424/2011	Do	Do	50(MP)2010 Dated 16.09.2010	21.10.2009	Dec 08 – Jan 09	D – 2,40,938/- P - 2,40,938/-
4.	E/1423/2011	Do	Do	51(MP)2010 Dated 16.09.2010	05.11.2009	Feb 09 – Mar 09	D – 2,32,031/- P – 2,32,031/-
5.	E/1425/2011	Do	Do	52(MP)2010 Dated 16.09.2010	17.12.2009	Apr 09 – May 09	D – 2,60,366/- P – 2,60,366/-
6.	E/1426/2011	Do	Do	53(MP)2010 Dated 16.09.2010	03.02.2010	June 09 – Sep 09	D – 4,89,111/- P – 4,89,111/-
7.	E/1427/2011	Do	Do	54(MP)2010 Dated 27.09.2010	15.04.2010	Oct 09 – Dec 09	D – 2,27,936/- P – 2,27,936/-
8.	E/1431/2011	Do	52/CE/ALLD/2011 Dated 31.03.2011	07(MP)2010 Dated 24.01.2010	25.05.2009	Jun 08 - July 08	D – 4,01,890/- P – 4,01,890/-

2. The brief facts of the case are that, the appellants are manufacturer of biscuits and persons associated with the same. During the manufacture of biscuit, sugar syrup gets prepared to be used in making of biscuits. It appeared to Revenue that sugar syrup was classifiable under Tariff Item No. 17029090. Prior to 03.05.2007 the final products manufactured by the appellants were attracting Central Excise Duty @ 8% ad-valorem, therefore, intermediate products were exempted from payment of Central Excise Duty in term of Notification No. 67/1995-CE dated 16.03.1995.

However, w.e.f. 03.05.2007 all goods manufactured by appellant bearing MRP less than Rs. 100/- per kg were exempted under Notification No. 22/2007-CE dated 03.05.2007 and, therefore, the benefit of Notification No. 67/1995-CE for sugar syrup, as intermediate product, became inapplicable. Therefore, the appellants were issued with various show cause notices demanding Central Excise duty on intermediate product 'sugar syrup' captively consumed in the manufacture of biscuits. The said show cause notices were adjudicated through various Order-in-Originals where the demands were confirmed. Aggrieved by the said Order-in-Originals, the appellants preferred appeals before Learned Commissioners (Appeals). Learned Commissioners (Appeals) through above stated five Order-in-Appeals decided the said appeals. Learned Commissioners (Appeals) in all the above stated Order-in-Appeals upheld the Order-in-Originals. Being aggrieved by the said orders, appellants are before this Tribunal.

3. Heard the learned counsel for the appellant who has submitted that the issue is no more res-integra in view of the various Final Orders issued by this Tribunal including order issued by this Bench in respect of **M/s Bhagwati Food Private Ltd.** He has submitted a copy of Final Order Nos. 70409-70417/2016 dated 30.06.2016 passed by this Bench in respect of appeal filed by M/s Bhagwati Food Pvt. Ltd. and

others in Appeal Nos. E/51610-51618/2015 and submitted that this Tribunal had allowed appeals by setting aside the impugned Order-in-Appeals in the said appeals.

4. Heard the learned AR who has agreed that the present appeals are squarely covered by Final Order of this Tribunal in above stated case.

5. Having considered the submissions made from both sides and on perusal of record, we find that this Tribunal in the said case of M/s Bhagwati Food Pvt. Ltd. and others (supra) relied on the decision of the Coordinate Bench in the case of **Rishi Bakers Pvt. Ltd., Kanpur** decided through Final Order Nos. 50759-50764/2015 dated 03.03.2015 reported at 2015 (378) ELT 634 (Tri. Delhi) and held that, there was no evidence to prove that sugar syrup captively consumed is classifiable under Tariff Item No. 17029090 nor there is any evidence to prove that the goods in question in the form in which they come into existence in the appellants' factory are marketable. In view of such finding it was held that sugar syrup coming into existence during the manufacture of biscuits was not attracting Central Excise duty. In view of said findings, in the present case we hold that sugar syrup coming into existence during the manufacture of biscuits and captively consumed does not attract Central Excise duty for the reason that there is no evidence that the same is marketable. We, therefore, allow all the above stated

eight appeals. The appellants shall be entitled for the consequential relief.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Anil Choudhary)**
Member (Technical)	**Member (Judicial)**

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