

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

APPEAL No.E/70073/2016-EX[DB]

(Arising out of Order-in-Appeal No. 104 & 105/CE/ALLD/2015 dated 07/10/2015 passed by Commissioner of Central Excise (Appeals), Allahabad)

M/s K.N. Bakers (P) Ltd.,

Appellant

Vs.

Commissioner of Central Excise, Kanpur

Respondent

Appearance:

Shri Rajesh Chhibber, Advocate

for Appellant

Shri Gyanendra Kr. Tripathi, Asstt. Commissioner (AR),

for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

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

Date of Hearing : 11/12/2018

Date of Decision : 11/12/2018

FINAL ORDER NO-72900 / 2018

Per: Archana Wadhwa

Learned Advocate Shri Rajesh Chhibber appearing as proxy counsel on behalf of the advocate on record prays for deciding the appeal on merits and in support he produced the Tribunal's decision in the case of M/s Rama Krishna Bakers Pvt. Ltd. Final Order No.72164/2018 dated 06.08.2018.

2. On going through the impugned order, we find that the short issue involved in the present appeal is as to whether the sugar syrup emerging in the assessee's factory and further

used captively in the manufacture of Glucose Biscuits of MRP of less than Rs.50 per KG, which are exempted from payment of Central Excise Duty, is liable to pay duty of excise or not. The authorities below, by holding that said sugar syrup is exciseable, confirmed the demand against the manufacture unit to the extent of Rs.4,62,512/- alongwith imposition of penalty of identical amount under Section 11AC of the Act.

3. Both sides agree that the issue of exciseability of sugar syrup is no more res-integra and the Tribunal in the case of Rishi Bakers Pvt. Ltd. reported at 2015 (328) ELT 634 (Tri.-Del) has held that the sugar syrup coming into existence during manufacture of biscuits and captively consumed does not attract Central Excise Duty for the reason that there is no evidence of its marketability. To the same effect is another decision of the Tribunal in the case of Bhagwati Food Pvt. Ltd. vide Final Order No.70409-70417/2016 dated 30.06.2016.

4. As the issue involved stands settled in favour of the assessee, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)