

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT No. I

Excise Appeal No.70612 of 2018-Division Bench

(Arising out of Order-in-Appeal No.109-110/COMMR.(Audit)/CE/APPL/KNP/2018 dated 23/02/2018 passed by Commissioner (Audit) Central Tax & Central Excise, Kanpur)

Commissioner, Central Excise

& CGST, Kanpur

.....Appellant

(17/7, Sarvodaya Nagar, Kanpur-208005)

VERSUS

M/s Madhav Biscuits Pvt. Ltd.

....Respondent

(Arzi No.1554, Sachendi, Kanpur)

APPEARANCE:

Shri Pawan Kumar Singh, Authorised Representative for the Appellant
Shri Anuj Agarwal, Advocate for the Respondent

CORAM:

**HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

FINAL ORDER NO. 70975 / 2019

Date of Hearing : 14 May, 2019
Date of Decision : 14 May, 2019

PER: ARCHANA WADHWA

A short issue involved in the present appeal of the Revenue is as to whether the sugar syrup and cream emerging in the respondents factory during the course of manufacture of biscuits, which were exempted, would attract duty liability or not.

2. Commissioner (Appeals) by following the Tribunal decision in the case of Rishi Bakers Pvt. Ltd. reported as 2015 (378)

E.L.T. 634 (Tri.-Del.), has held that as the sugar syrup and cream are not marketable, they cannot be held to be excisable.

3. Revenue in their memo of appeal have again reiterated their stands on the issue of marketability and consequent excisability. It is not their case that ratio of law declared in the Rishi Bakers Pvt. Ltd. case would not apply to the present matter. We also note that the said decision in the case of Rishi Bakers Pvt. Ltd. stands followed by the Tribunal in number of subsequent decisions. Reference can be made to Final Order No.72343-72350/2018 dated 09.11.2017.

4. Inasmuch as the issue stands decided, we find no merits of the Revenue's appeal and the same is rejected.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks