CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

Excise Appeal No.70388 of 2016

(Arising out of Order-in-Appeal No.452-CE/APPL/LKO/2015 dated 26.11.2015 passed by Commr.(Appeals) of Customs & Central Excise, Lucknow.)

M/s. Swastik Biscuit (P) Ltd.
(Vill. Mohammadpur, Post Safedabad,
Distt.Barabanki (U.P.))

...Appellant

VERSUS

Commr. of Central Excise, Lucknow

.....Respondent

(7A, Ashok Marg,
Lucknow.)

APPEARANCE

Shri Kapil Vaish (C.A.) for the Appellant (s)
Shri Mohd. Altaf (Asstt.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

FINAL ORDER NO.71069 / 2019

DATE OF HEARING : 16 May 2019
DATE OF DECISION : 16 May 2019

MRS. ARCHANA WADHWA :

After hearing both sides and 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.100 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 excisable, confirmed the demand against the manufacture unit to the extent of Rs.63,360/- alongwith imposition of penalty of identical amount under Section 11AC of the Act.

3. Both sides agree that the issue of excisability 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 and pronounced in the open Court.)

Sd/-
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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