

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

REGIONAL BENCH - COURT No. I

Excise Appeal No. 71032 & 71033 of 2018-[DB]

[In Excise Appeal No. 71032 of 2018]

(Arising out of Order-in-Appeal No.70-CE/Appeal/Audit LKO/2018 dated 15/03/2018 passed by Commissioner of Central Goods & Service Tax and Central Excise (Audit), Lucknow)

Commissioner of Central Excise,

.....Appellant

(Kanpur)

VERSUS

M/s Marko Foods,

....Respondent

(C-61, Panki Site-V, Udyog Kunj, Kanpur)

WITH

Excise Appeal No. 71033 of 2018

(Arising out of Order-in-Appeal No.70-CE/Appeal/Audit LKO/2018 dated 15/03/2018 passed by Commissioner of Central Goods & Service Tax and Central Excise (Audit), Lucknow)

Commissioner of Central Excise,

.....Appellant

(Kanpur)

VERSUS

M/s Naman Mandhyan, Partner,

....Respondent

(M/s Marko Foods, C-61, Panki Site-V, Udyog Kunj, Kanpur)

APPEARANCE:

Shri Ghyanendra Kumar Tripathi, Deputy Commissioner, Authorised Representative for the Appellant

Absent on call,

for the Respondent

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

FINAL ORDER NOS. 71386-71387 / 2019

DATE OF HEARING : 10 July, 2019
DATE OF DECISION : 10 July, 2019

PER: ANIL G. SHAKKARWAR

Above stated two appeals are taken together for decision since they are arising out of the same impugned Order-in-Appeal No.70-CE/Appeal/Audit LKO/2018 dated 15/03/2018 passed by Commissioner of Central Goods & Service Tax and Central Excise (Audit), Lucknow.

2. After hearing the learned Authorised Representative on behalf of revenue, we note that the dispute in the present appeal was regarding applicability of Sl. No.19 of Notification No.12 of 2012-CE dated 17.03.2012 since the said entry was eligible for Sugar Confectionery excluding White Chocolate and bubble gum falling under subheading 17049020. The contention of revenue was that the goods manufactured by respondent such as Parle 2 in 1 Rosemilk flavor (name change to "Kismi Rajbhog Flavour") and Kisme Rose milk flavor fall under subheading 17049030 containing chocolate and therefore the said notification is not applicable to the same. The learned Commissioner (Appeals) has relied upon the decision of the Tribunal in the case of India Medtronics Pvt. Ltd. Vs Commissioner of Customs, Ahmedabad reported as 2007 (214) ELT 373 (Tri.-Ahmedabad) and decision of this Tribunal in the case of M/s Campco Chocolate Factory Vs Commissioner of Central Excise, Mangalore reported at 2013 (293) ELT 0057 (Tri.-Bang.) and held that the respondents were entitled for the said benefit. Aggrieved by the said order revenue has preferred present appeals.

3. After hearing the learned A.R. for revenue and on perusal of record, we note that the revenue has not raised any ground as to how the relied upon decisions of this Tribunal by learned Commissioner (Appeals) are not applicable in the facts of present case. We, therefore, do not find any merits in the grounds raised by revenue.

4. We, therefore, upheld the impugned order and reject both the appeals filed by revenue.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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