FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 29/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71067/2016-SM[BR] dated 25/11/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944**.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1149/2009	TARA SNACKS & FOOD PVT. LTD. B-1, SECTOR-14, INDUSTRIAL AREA, JAGDISHPUR, DISTT. SULTANPUR. (U.P.)
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, ASHOK MARG, LUCKNOW.

Copy To

3 Advocate(s) / Consultant(s):

S. P. OJHA
299, BAGHAMBARI HOUSING SCHEME,
ALLAHPUR,
ALLAHABAD,UTTAR PRADESH

4. Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

5-12-16

ISSUED ON

SECTION OFFICER (JUDICIAL BRANCH)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No.E/1149/2009-EX[SM]

Arising out of Order-in-Appeal No.246-CE/LKO/2008 dated 30.12.2008 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Tara Snacks & Food Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Lucknow

...RESPONDENT (S)

APPEARANCE

Shri S.P. Ojha, Consultant for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT: 25.11.2016

FINAL ORDER NO.- 71067/2016

Per Mr. Anil Choudhary :

The issue in this Appeal by the assessee, manufacturer of Biscuits under the Brand name of another is whether they are entitled to exemption (SSI) under Notification No.8/2003-CE, being located in rural area, as claimed.

2. The brief facts of the case are that the appellant is engaged in the manufacture of biscuits falling under Chapter Heading 1905.11 of 1st Schedule to the Central Excise Tariff Act, 1985 and registered with the Central Excise Department. During the period, 2004-05 value of clearances of their final products was Rs.1,00,95,993/-. The appellant availed full exemption in terms of Notification No.8/2003-CE dated 01.03.2003 as amended, from payment of duty upto clearance of Rs.1 crore and paid total duty Rs.7,999.00 (Basic Rs.7845.00 + Ed. Cess 154.00) on the value of clearance above Rs.1 crore i.e. on Rs.95,993.00 only. But, on perusal of their records by the Central Excise Officers it was found that the appellant has manufactured and cleared biscuits of the brand name "Bhagwati" which belonged to others.

3. On enquiry, the appellant vide their letter dated 07.03.2007, informed that during the period September, 2004 to January, 2004 they have under agreement/licence produced "Bhagwati" brand biscuits, and they managed the sale themselves by using goodwill of "Bhagwati" logos. They also informed in the said letter that they have already intimated to the Assistant Commissioner, Central Excise, Raebareli on 13.09.2004 that they were going to produce a

new packing of Super G & Coconut Crunch under the Licence of Bhagwati Foods Pvt. Ltd., Kolkata, using its Trade Marks "Bhagwati"which would be marketed by them.

4. On perusal of their quarterly return namely E.R.-1s of the relevant period, no information regarding production and clearance of Bhagwati brand biscuits was found. As such, on further enquiry, the appellant vide their letter dated 22.03.2007 filed detailed chart dated 21.02.2007, informed that they have manufactured and cleared 189309 Kgs. of "Bhagwati" brand biscuits and 137901.50 Kgs. "Bisca" brand, valued at Rs.61,87,545.00 and Rs.39,08,448.00 respectively during the financial year 2004-05.

5. "Bhagwati" Brand is owned by M/s Bhagwati Foods (P) Ltd. Kolkata, and the appellant were using it as per licence user agreement executed on 26.08.2004 between the appellant and M/s Bhagwati Foods (P) Ltd. The "Bisca" brand is owned by the appellant themselves.

6. The exemption available vide the Notification No.8/2003-CE dated 01.03.2003, as amended, did not appear applicable in case of clearance of biscuits bearing the brand viz. "Bhagwati" of another person viz. M/s Bhagwati Foods Pvt. Ltd., Kolkata.

7. On perusal of the chart, submitted by the appellant on 21.02.2007, for the period April, 2004 to March, 2005, it is seen that during the period April, 2004 to August, 2004 the appellant manufactured and cleared biscuits of their own brand namely "Bisca" only, during the period September, 2004 to October, 2004 the appellant

manufactured and cleared biscuits of both the brand namely "Bisca" their own brand and "Bhagwati"- the brand of another person and during the period November, 2004 to January, 2005 they manufactured biscuits of "Bhagwati" brand only. However, on perusal of quarterly returns for the period April, 2004 to March, 2005, it is seen that, in all the returns, the appellant have only mentioned Chapter Sub-Heading No.1905.11 and quantity manufactured and quantity cleared with their assessable value.

8. The show-cause-notice was adjudicated on contest and the proposed demand of Rs.4,96,905/- confirmed, rejecting the claim of benefit as an SSI and further equal amount of penalty was imposed under Rule 25.

9. Being aggrieved, the appellant preferred appeal before Ld. Commissioner (Appeal) who vide the impugned order have been pleased to reject the appeal observing that there is no dispute that the appellant-assessee have manufactured and cleared branded goods (brand of another). The appellant is claiming exemption of SSI on the ground that their unit falls under "Rural area" and Rural area have been defined in Clause 5H of the same notification as – 'rural area' means - the area comprised in a village as defined in the Land Revenue records, excluding –

"The area under any municipal committee, municipal corporation, town area Committee, Cantonment board or notified area or any area that may be notified as an urban area by the Central Government or a State Government."

10. The Ld. Commissioner has further observed that unit of the appellant exist on the Plot allotted by U.P. State Industrial Development Corporation and declared as Industrial area. Accordingly, Ld. Commissioner held, since the area is notified as Industrial area, the appellant is not entitled for the benefit of Notification No.8/2003-CE.

11. The learned counsel for the appellant, Mr. S.P. Ojha, has placed before me the copy of Constitution of India and in part 9 definitions have been given as regords Gram Sabha, Municipality etc. Nowhere, an industrial area have been defined to be separate categorically, either in the Constitution of India or in Notification No.8 of 2003-CE. The appellant has also produced the copy of certificate granted by the Deputy D.M., Musafir Khana, District-Sultanpur. It states that the appellant's unit is located in Sector-1 Industrial Area, Jagdishpur, is located in Gram Sabha-Utelawa, Pargana-Jagdishpur, Tehsill-Musafir Khana, District-Sultanpur. The learned counsel further states that a unit located in Gram Panchayat or Sabha is not excluded from the benefit of SSI exemption in terms of Clause 4(C) read with Clause 5-H of Notification No.8/2003-CE. Accordingly, he prays for setting aside the impugned order and allowing the appeal.

12. Heard the learned AR for Revenue, who relies on the impugned Order.

13. Having considered the rival contentions, I am satisfied that the appellant's unit is located in the Industrial area, which is located in the Gram Sabha as per the Revenue records duly certified by the

Revenue Authority of the State Government and, accordingly, I hold that the appellant's unit is entitled to exemption under Notification No.8/2003-CE in terms of Clause 4(C) read with Clause 5H of Notification No.8/2003-CE. Accordingly, this appeal is allowed with consequential benefits and the impugned order is set aside. Pre-deposit made during pendency of the appeal, shall be refunded to the appellant within a period of 60 days with interest as per Rules from receipt of this order by the Adjudicating Authority.

(Dictated and Pronounced in the open Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Mishra

सत्यापित प्रति / Certified True Copy
2/12
[illegible] / [illegible] Registrar
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38, एम. [illegible] 211001
38, M. G. MARG, ALLAHABAD-211001