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: 21/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70572/2017-EX[DB] dated 14/06/2017

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/1574/2008	CCE LUCKNOW 7-A, ASHOK MARG, LUCKNOW.
		Name and Address of Respondent
2		NUTRICIA INDIA (P) LTD. DAIRY COMPLEX,ETAH. (U.P.),, ,

Copy To

3Advocate(s) / Consultant(s):

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

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

APPEAL No. E/1574/2008-EX[DB]

(Arising out of Order-in- Appeal No. 53-CE/2008 dated 31/03/2008 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

Commissioner of Central Excise, Lucknow **Appellant**

Vs.

Nutricia India (P) Ltd. **Respondent**

Appearance:

Shri Pawan Kumar Singh (Supdt)AR for Appellant
None for Respondent

CORAM:

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

Date of Hearing : 14/06/2017
Date of Decision : 14/06/2017

FINAL ORDER NO...70572/2017......

Per: Anil G. Shakkarwar

The present appeal filed by Revenue is directed against Order-in-Appeal No. 53-CE/2008 dated 31.03.2008.

2. The brief facts of the case are that the respondent were engaged in the manufacture of Edible preparation and were classifying the goods manufactured by them under Chapter Heading No. 2108.00 and were claiming abatement of 40% on MRP. It appeared to Revenue that the goods manufactured by respondent contained Malt Extract and were flavored with Cocoa, therefore, the same were classifiable under Chapter

Sub Heading No. 1901.92 of Central Excise Tariff Act, 1985, where the abatement available was 35% on MRP. The Original Authority decided to issue through Order-in-Original No. 17/JC/LKO/2007 dated 15.05.2007 wherein the Original Authority decided the classification of said goods under Chapter Sub Heading No. 1901.92 and confirmed the demand of Rs. 3,03,906/- for the period from 2001-02 to 2003-04 and equal amount of penalty was imposed through the said order. Respondent preferred appeal before learned Commissioner (Appeals). The appeal was decided through impugned Order-in-Appeal No. 53/CE/2008 dated 31.03.2008 wherein the learned Commissioner (Appeals) has set aside the said Order-in-Original dated 15.05.2007. Aggrieved by the said order, Revenue is in appeal before this Tribunal.

3. Heard the learned AR for the Revenue. The learned AR has taken us through the ground of appeal which is as follows:-

"According to the Rules of interpretation of the First Schedule to the Central Excise Tariff, the Heading which is more specific shall be preferred over the Heading providing a general description. In the instant case the product CALGAIN, as per the declared composition is based on Malt Extract containing Cocoa and therefore more specifically attracts the sub Heading No. 1901.92 as rightly observed by the adjudication authority. The sub Heading No. 1901.92 stands for food preparations containing Malt or Malt Extract or

Cocoa Powder in any proportion. This sub-Heading in comparison to Chapter 21 dealing with miscellaneous edible preparations appears more specific in so far as the item in question is concerned.

The Chapter Heading No. 19.01 of Central Excise Tariff Act, 1985, as it stood at the material time, reads as under –

Heading No.	**Sub-Heading No.**	**Description of goods**
(1)	(2)	(3)
19.01		**Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40% by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of heading Nos. 04.01 to 04.04, not containing cocoa or containing less than 5% by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included**
		-Put up in unit containers:
	1901.11	--For infant use
	1901.19	--Other
		-Other:
	1901.91	--Malt extract
	1901.92	--Food preparations containing malt or malt extract or cocoa powder in any proportion
	1901.99	--Other

In the Tariff against Heading No. 1901, the description of goods falling under the same Heading has been given. There below against a single dash, a category has been made, i.e. **put up in unit containers;** the said category has been divided into two sub heading each with two dashes; **namely 1907.11 for infant use and 1901.19 other than for infant use.** Both are to be in unit containers. The next category against a single dash is **other:** which has been devided into three sub headings with two dashes against each one of them; namely, **1901.91 Malt Extract, 1901.92 food preparations containing Malt or Malt Extract of Cocoa Powder in any proportion and 1901.99 other.** Thus, it appears that 1901.92 falling under the second category 'other': is independent of the sub heading falling under the first category 'put up in unit containers' against a single dash. **Therefore, 1901.92 has got nothing to do with unit containers.** In other words, if it is food preparations containing Malt or Malt Extract or Cocoa Powder in any proportion, **it should fall under 1901.92 irrespective of whether it is in unit containers or in bulk quantity.** Therefore, the Ld. Commissioner (Appeals) observation, *"to merit classification under sub Heading 1901.92, the basic condition is that the goods should not be put up in unit containers, rather they should be in bulk quantity. The said sub Heading exclusively deals with the goods which are not put up in unit containers"*, does not hold .gold. No condition has been imposed under the sub Heading 1901.92 that the goods should be in unit container or in bulk quantity. Therefore the sub Heading 1901.92 is appropriate Heading for the product in hand i.e. CALGAIN."

4. The respondent is absent on call.

5. Heard the learned AR and perused the record. We find that under Chapter Heading No. 19.01 the title of the heading

includes food preparations containing Malt Extract and containing Cocoa less than 40% by weight. The said goods are divided through single dash in two categories, one category is "put up in unit containers" and the other category is "others". 1901.92 is sub set through double dash of "others". It is a fact on record that the goods manufactured by the respondent are put up in unit containers. Therefore, obviously they will not fall in the category "others" which includes 1901.92. Therefore, we do not find any merit in the ground put forth by Revenue. As a result appeal filed by Revenue is dismissed and Order-in-Appeal dated 31.03.2008 impugned is upheld.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

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

Ankit