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: 22/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70848-70849/2016-EX[DB] dated 07/09/2016

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/2835/2011	ASHOK GRIH UDYOG KENDRA LTD. 62-A, DADA NAGAR, KANPUR.
2	E/2861/2011	SHUBHAM GOLDIEE MASALE (P) LTD. 184-185-B, DADA NAGAR, KANPUR.
		Name and Address of Respondent
3		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Other Appellants and Respondents as per Annexure

Copy To

4 Advocate(s) / Consultant(s):

Amit Awasthi
H-1, IST FLOOR, RADHEY
APPARTMENT,
PLOT NO. 7/116A, SWAROOP
NAGAR, KANPUR,
UTTAR PRADESH
208002

O/C

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

5 Bar Association, CESTAT, Allahabad

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

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

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

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

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. ~~17~~ Office Copy ~~18~~ Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL Nos. E/2835/2011 & 2861/2011 -EX[DB]

(Arising out of Orders-in-Original No. 17 & 18/Commissioner/2011 dated 29-07-2011 passed by Commissioner of Central Excise, Kanpur.)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Ashok Grih Udyog Kendra Ltd. (In Appeal No. E/2835/2011) &
Shubham Goldiee Masale (P) Ltd. (In Appeal No. E/2861/2011)

Appellant(s)

Vs.

Commissioner of Central Excise, Kanpur — Respondent(s)

<u>Appearance:</u>

Shri Bipin Garg, (Advocate) &
Shri Amit Awasthi, (Advocate) — for Appellant(s)
Shri Rajeev Ranjan, Joint Commissioner (AR), — for Respondent

<u>CORAM:</u>

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

Date of Hearing & Date of Decision: 07-09-2016

FINAL ORDER NO...70848-70849/2016

Per: Anil G. Shakkarwar:

In the above stated appeals though the impugned orders are different, the issue in appeal filed by Ashok Grih Udyog Kendra Ltd., is also covered in appeal filed by Shubham Goldiee Masale (P) Ltd. and therefore both the appeals are taken together for decision.

2. In respect of, Shubham Goldiee Masale (P) Ltd., who are manufacturer of different types of Masale such as Jaljeera, Dehati Buknu (Hazmi), Diabetic Masala, Milk Masala, Shikakai Powder etc., are also involved in sale of Gulabjamun Mix (Only Trading). They were issued with show cause notices as detailed in Table below:-

Table

SCN Dated	Period	Demand (Rs)
(i) 04.08.06	01.01.02 to 31.03.05	3,14,45,768/-
(ii) 16.01.07	01.04.05 to 31.03.06	1,47,87,417/-
(iii) 06.02.07	01.04.06 to 30.09.06	63,71,831/-
(iv) 19.07.07	01.10.06 to 31.03.07	67,03,648/
(v) 28.01.08	01.04.07 to 30.09.07	59,37,010/-
(vi) 18.09.08	01.10.07 to 31.03.08	81,80,208/-
(vii) 26.02.09	01.04.08 to 30.09.08	53,11,741/-
		7,87,37,623/-

The demands were raised in the said Show Cause Notices for the period from 01-01-2002 to 30-09-2008 and the demands were on goods ~~was~~ as per Table below:-

Table

Goods	Demand (Rs)
(i) Jaljeera	72,59,844.69/-
(ii) Dehati Buknoo (Hazmi),	12,72,869.49/-
(iii) Milk	87,166,0.3/-
(iv) Diabetic	49,352.55/-
(v) Gulabjamun mix (only trading)	5,28,45,091.63/-
(vi) Shikakai Powder	144,475/-
	6,17,96,163/-

The Show Cause Notice dated 26-02-2006 stated that it was relied upon document viz. letter dated 23-01-2009 received from Shubham Goldiee Masale (P) Ltd. on 28-01-2008 which is listed as (RUD – 04) along with Annexure-A. Annexure-A is the details of the goods cleared during the period from 1st April, 2008 to 30th September, 2008 by Shubham Goldiee Masale and it was stated in the said Annexure A that Shubham Goldiee Masale (P) Ltd. was involved only in trading of Gulabjamun Mix and they did not involve in manufacturing activity of Gulabjamun Mix. The allegations in the Show Cause Notice were that Shubham Goldiee Masale (P) Ltd., were involved in manufacture of above stated Masalas and the said Masalas merit classification under Chapter Heading 21.08/21.06 and chapter note of said chapter provides that re-packing of the goods falling under Chapter Heading 21.08/21.06 amounts to manufacture. Therefore, Shubham Goldiee Masale (P) Ltd., were called upon to show cause as to why the various Masalas manufactured by them should not be classified under chapter heading 21.08/21.06 and Central Excise duty as stated in show cause notices stated above should not be demanded from them. In addition, there were other proposals for penalty and interest etc. All the Show Cause Notices were adjudicated through Order-in-Original No. 18/Commissioner/2011 dated 29-07-2011 wherein the Original Authority has refused to accept the classification under Chapter Heading 09.03 claimed for the Shubham Goldiee Masale (P) Ltd., and held that all the commodities were covered under chapter heading 21.08. Further, the original authority has confirmed the demand and also confirmed the demand on Gulabjamun Mix for which Shubham Goldiee Masale (P) Ltd., had claimed that they were not manufacturing the same and were involved in its trading only. In respect of, Ashok Grih Udyog Kendra Ltd., they were issued with two Show Cause Notices, one dated 24-12-2001 covering a period from 01-12-1996 to 31-03-2001 demanding of Rs.59,53,150/- by invoking the proviso Sub-section 1 of Section 11A of the Central Excise Act, 1944. Both the Show Cause Notices had a proposal to classify various Masalas manufactured by Ashok Grih Udyog Kendra Ltd. under Chapter Sub-heading 2108 as against classification claimed by Ashok Grih Udyog Kendra Ltd., under chapter sub heading 09.03. Another Show Cause Notice was issued by Ashok Grih Udyog Kendra Ltd., which was dated 04-08-2006 wherein proviso Sub-section 1 of Section 11A of the Central Excise Act, 19444 was invoked and a demand was raised for the same Masalas manufactured by them amounting to Rs.1,28,30,270/- for the period from 2001-02 to May, 2006. In the said Show Cause Notices, there was a proposal to classify Masala manufactured by Ashok Grih Udyog Kendra Ltd., in Chapter Sub-heading 2108 as against claim of their classification in 09.03 by Ashok Grih Udyog Kendra Ltd. Both the above stated Show Cause Notices were taken together for adjudication. They were adjudicated through Order-in-Original No. 17/Commissioner/2011 dated 29-07-2011. In the said adjudication order the Original Authority has classified Jaljeera and Dehati Buknoo called as Hazmi under chapter heading 21.08 for period before 01-03-2005 and in sub heading 2106 after 01-03-2005 and confirmed the demand totaling amounting to Rs.1,19,73,817/- for the period from 01-12-1996 to 31-05-2006. The Original Authority dropped the demand of duty raised against the goods viz. Rayata Masala, Chaat Masala, Daal Masala, Chana Masala, Dahi Bara Masala, Chatpata Masala, Tea Masala, Muri Masala, classifying them under chapter 09. In addition there was order for demand of interest and imposition of penalty.

3. M/s Shubham Goldiee Masale (P) Ltd., preferred an Appeal No. E/2861/2011 against Order-in-Original No.

18/Commissioner/2011 dated 29-072011. M/s Ashok Grih Udyog Kendra Ltd., preferred an Appeal No. E/2835/2011 against the Order-in-Original 17/Commissioner/2011 dated 29-07-2011. In the appeal of Ashok Grih Udyog Kendra Ltd., there are only two Masalas involved, which are Jaljeera and Dehati Buknoo (Hazmi). In the appeal preferred by Shubham Goldiee Masale (P) Ltd., the goods involved are Jaljeerar, Dehati Buknoo (Hazmi), Milk Masala, Diabetic Masale and Gulabjamun Mix which is involved only in trading and Shikakai Powder.

4. The grounds of appeal are similar in both cases. The grounds, inter-alia, include the following grounds (a) in respect of Jaljeera the ruling of Hon'ble Apex Court in the case of Commercial Tax Officer Vs. Jalani Enterprises reported at 2011 (266) 289 (SC), is squarely applicable in the present case. Whether Jaljeera Masala is Masala or Appetizer- was the question framed ~~found~~ before the Apex Court. The Apex Court has held that Jaljeera is Masala packed into packets. Further, chapter note 3 of chapter 9 indicates Sub Heading 09.03 includes products commonly known as "Masalas". Therefore, the classification of Jaljeera should be under 09.03(b) in respect of Hazmi i.e. Dehati Buknoo and Milk Masala, the issue was settled by ld. Additional Commissioner of Central Excise, Kanpur, through Order-in-Original No. 39-CEX/ADC/2010 dated 19-08-2010 wherein ld. Additional

commissioner has decided that the classification of the product Dehati Buknoo and Milk Masala to be falling under Chapter Sub-heading 09.03 and the said order of Additional Commissioner has been accepted by Commissioner of Central Excise, Kanpur, who happens are to be the Adjudicating Authority in the impugned orders (c) in respect of, Gulabjamun Mix, they have contested that they relied upon document (RUD-04) along with Annexure-A. The said Annexure-A indicates that Shubham Goldiee Masale (P) Ltd., has always stated that they were not manufacturing Gulabjamun Mix but they were involved in only trading. Therefore, they did not attract provisions of Section 11A (1) of Central Excise Act, 1944 in respect of Gulabjamun Mix. Therefore, the demand confirmed by Original Authority in respect of Gulabjamun Mix is contrary to law.

5. In respect of Ashok Grih Udyog Kendra Ltd., the grounds of appeal in respect of Jaljeera and Dehati Buknoo (Hazmi), are same as stated above by M/s Shubham Goldiee Masale (P) Ltd.

6. The ld. Counsel has reiterated the above stated grounds of appeal and further stated that they are not contesting the demand confirmed in respect of Shikakai Powder and Diabetic Masala.

7. The ld. D.R. for Revenue has supported the impugned Order-in-Original in the above stated two appeals.

8. We have taken rival contentions into consideration. We find that in respect of Jaljeera the Hon'ble Apex Court in the above stated case law of Commercial Tax Officer Vs. Jalani Enterprises reported at 2011 (266) 289 (SC) has held as follows:-

> 17. "Each one of the contents of the product referred to above and relied upon by the High Court would indicate that most of the items used in the manufacture of Jaljira are nothing else but spices. They are grinded and mixed. When spices are grinded and mixed, it gives rise to a new product, which is a mixed Masala. Different ingredients are used in preparation of Masala after grinding and mixing several ingredients and when they are so grinded they lose their own identity and character and a new product separately known to the commercial world comes into existence. Sales tax is levied on sale of commercial commodities, therefore, individual spices could be termed as different commercial commodities. When they are grinded and mixed they give rise to a separate commercial commodity altogether which could be taxed

separately. It is settled law that when one particular item is covered by one specified entry, then the Revenue is not permitted to travel to the residuary entry. If from the records it is established that the product in question could be brought under a specific entry then there is no reason to take resort to the residuary entry. There is no doubt that Jaljira is a drink. The contents of Jaljira is put into water and taken as digestive drink but when we look into the manner and method of preparation of the product Jaljira, we find that it is a mixture of different spices after grinding and mixing. Therefore, it is nothing but a Masala packed into packets of different nature/quantity and sold to the consumers. It would, therefore, for all practical purposes would come within the Entry No. 184 and it cannot be said that it would come under the residuary entry as held by the High Court."

As stated above, the ruling by Hon'ble Apex Court has held that Jaljeera is nothing but a Masala packed into packets of different nature. We have also gone through the chapter note 3 of chapter 9 of schedule to Central Excise Tariff Act, 1985 in respect of the law prevailed till 01-03-2005. In respect of the tariff which is with effect from 01-03-2005, the same contents of chapter note 3 of chapter 9, is reproduced in supplementary notes. The said chapter note 3 indicated that chapter sub heading 09.03 covers goods commonly known as "Masala" and chapter note 3 indicates that Masala is classifiable under chapter sub heading 09.03. Therefore, we hold that Jaljeera is classifiable under chapter sub heading 09.03 during the period up to 01-03-2005 and the same is classifiable under chapter sub heading 09.10 for period subsequent to 01-03-2005. Since in both the impugned orders, duty is confirmed on Jaljeera treating them as classifiable under 21.08 the demand does not sustain. In respect of Dehati Buknoo though the impugned Show Cause Notices, were issued earlier. The Department later took a stand through Order-in-Original dated 19.08.2010 passed by Additional Commissioner, that Dehati Buknoo and Milk Masala were classifiable under 09.03 and such order was stated to be accepted by the Department. The issue is now settled that Dehati Buknoo (Hazmi), Milk Masala are classifiable under 09.03 or similar such classification subsequent to 01-03-2005 and since the impugned orders have confirmed the demand treating Dehati Buknoo and Milk Masala under 21.08, the said demand does not sustain. In respect of Gulabjamun Mix, we find that the reliance for issue of Show Cause Notice dated 26-02-2009 is placed on ~~later~~ Letter dated 23-01-2009 submitted by Shubham Goldiee Masale (P) Ltd, along with Annexure-A and the said Annexure is enclosed to Show Cause Notice indicates that Shubham Goldiee Masale (P) Ltd, had claimed in the said communication that they were not involved in manufacture of Gulabjamun Mix but they were involved in only trading of the same. The reason for not relying on the said statement that it was not manufacturing Gulabjamun Mix is not forthcoming in the Show Cause Notice nor in any of the earlier Show Cause Notices. Therefore, none of the Show Cause Notices involved in the impugned orders are sustainable for demand of duty in respect of Gulabjamun Mix under Central Excise Act, 1944. We, therefore, modify the impugned Order-In-Original No. 17/Commissioner/2011 dated 29/07/2011 by setting aside demand confirmed to the tune of Rs.1,19,73,817/- interest thereon & equal penalty. We similarly modify the impugned Order-In-Original No. 18/Commissioner/2011 dated 29/07/2011by setting aside demand confirmed to the tune of Rs.6,16,51,688/- interest thereon & equal penalty. As a result, we allow both the appeals partially and hold that the appellants shall be entitled for consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
25.10.16
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपीलीय अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001