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: 23/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71556/2017-SM[BR] dated 15/11/2017

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/1152/2010	**TIRUPATI BAKERS PVT. LTD.** Plot No.E-15A, & 16, Ind. Area (UPSIDC), Naini, Allhabad
		Name and Address of Respondent
2		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Copy To
3Advocate(s) / Consultant(s):

Jatin Mahajan, Adv
37, LGF Vionbapuri
Lajpat Nagar
New Delhi

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No. E/1152/2010-EX[SM]

(Arising out of Order-in-Appeal No. 50/CE/ALLD/2010 dated 19/02/2010 passed by Commissioner of Central Excise (Appeals), Allahabad)

M/s Tirupati Bakers Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Shri Jatin Mahajan (Advocate) for Appellant
Shri Mohd. Altaf (Dy. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 15/11/2017
Date of Decision : 15/11/2017

FINAL ORDER NO. 71556/2017..........

Per: Anil Choudhary

The issue in this appeal is whether the appellant have resorted to any clandestine removal.

2. The allegation as per the show cause notice dated 02/08/2007 ~~at~~ is that, the appellant is registered manufacturer, engaged in manufacturing of biscuits in the brand name "Parle G Biscuits" which are dutiable under Chapter Sub-heading 19059020 of the first schedule to CETA, 1985. The appellant submitted an application/information dated 03/07/2006 to the Revenue informing that they are required to destroy 1214 cartons of 50gm/packet, 1216

cartons of 100gm/packets and 2595Kg of loose biscuits as the same were not fit for human consumption/sales. In response, the Revenue asked them to submit a fresh application stating the value and Central Excise duty involved and the, reasons for rendering the same ~~and~~ not fit for human consumption vide its letter dated 20/07/2006. Thereafter the Revenue officers visited the factory of the appellant on 8th August 2006 and found no stock of such biscuits in the factory. On being asked the director of the appellant Mr. Sanjai Ratnani stated that the biscuits in question were destroyed by burning in flames on 19 & 20/07/2006. These biscuits were destroyed at the direction received by them from M/s Parle Biscuits Private Ltd. He also denied to have given any intimation regarding destruction of the same. The representative of 'Parle G Biscuits' also stated in the written statement that biscuits were destroyed by burning in the factory premises under his supervision as per direction received from Parle Biscuits Private Ltd. Under such facts and circumstances it appeared to Revenue that the appellant have clandestinely removed the biscuits in question valued at Rs.15,03,799.99 and the duty payable on the same, on the basis of MRP based duty, comes to Rs.79,762/-. Further facts in the SCN are that the appellant had sought remission under Rule 21 of CER, 2002. The other allegation is that the appellant removed the goods without payment of duty, before receipt of letter of Range Officer for resubmission in proper proforma. Further, in RG-1 the appellant have not shown quantity of loose biscuits in the respective column. The appellant have made entries regarding destruction on 19/20 July, 2006. It appeared that the appellant have amended records and accordingly, they were required to show cause as to why duty amounting to Rs.79,762/- should not be recovered and further penalty was proposed under Rule 25 of CER, 2002. The SCN was adjudicated on contest vide Order-in-Original dated 30th May, 2008 by the Assistant Commissioner, was pleased to confirm the proposed demand with equal amount of penalty under Rule 25 of CER, 2002.

3. Being aggrieved the appellant preferred appeal before this Tribunal who has been pleased to reject the appeal vide the impugned Order-in-Appeal.

4. The Learned Counsel for the Appellant states that rejection of some biscuits is a normal feature in the biscuit industry. Further, the appellant manufactures under contract for Parle Biscuits Pvt. Ltd. Under the terms of contract, the appellant is required to clear the goods only to Parle, as the goods are manufactured under the Parle brand. The rejected biscuits due to defect in quality are separately stored and have to be disposed of, in consultation and as per directions of Parle Biscuits Private Ltd. Accordingly, the appellant have given proper intimation to the Revenue more than 15 days in advance before the date of destruction of the biscuits in question. Further it is a fact on record that the representative of

Parle Biscuits Private Ltd. was also present at the time of destruction who have also stated so before the Revenue Authority. Further admitted facts are that the appellant had informed the Revenue by their subsequent letter dated 03/07/2006 a copy of which is annexed to the appeal paper book stating that the reason for defect/fit for destruction is that the biscuits are in the shape of chura and broken pieces which emerged during the production process. Such rejects emerged during the processing or manufacturing, is neither saleable nor marketable and also not fit for consumption and is required to be destroyed and accordingly, were destroyed by burning in fire in the factory premises on 19/20 July, 2006 as intimated. Further stating that the Cenvat credit involved in the waste quantity have already been reversed vide Debit Entry No. 210 dated 03/07/2006 in the Cenvat Account. The quantity of spoiled ingredients, as per earlier intimation, where~~in~~ intimated in the form of boxes for ease of understanding only. The Learned Counsel further states that the whole show cause notice is presumptive there is no evidence or material on record, leading to any adverse inference. Further, there is no evidence of any clandestine activity or clandestine removal found by Revenue, accordingly, Learned Counsel prays for allowing the appeal with consequential benefits.

5. The Learned A.R. for Revenue have relied on the impugned order.

6. Having considered the rival contentions, I observed that occurrence of rejects and/or process loss is a normal feature in the biscuit industry. I further find that appellant had given proper intimation to the Revenue Authority of the proposed destruction and the same was destroyed after about two weeks from the date of such intimation. Further, I find that there is no evidence on record of any clandestine activity and/or attempted removal on the part of the appellant. The whole show cause notice is presumptive and accordingly, I hold that it is not maintainable. Accordingly, this appeal is allowed and the impugned order is set aside. The appellant shall be entitled to consequential benefits, in accordance with law.

(Dictated & Pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)

Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy

सहायक पंजीकार/Asstt. Registrar 14/12/12

सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण/(C.E.S.T.A.T.)

38, एम.जी.मार्ग, इलाहाबाद-211001

38, M. G. MARG, ALLAHABAD-211001