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: 17/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71245-71249/2017-EX[DB] dated 03/10/2017

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/50719/2015	**Gokul Foods Pvt Ltd** Village-gudhrolli, G.t. Road Chaudagra FATEHPUR UP
2	E/50720/2015	**Gokul Foods Pvt Ltd** Village Gudhrolli, G.t. Road Chaudagra FATEHPUR UP
3	E/50721/2015	**Gokul Foods Pvt Ltd** Village Gudhrolli, G.t. Road Chaudagra FATEHPUR UP
4	E/50722/2015	**Gokul Foods Pvt Ltd** Village Gudhrolli, G.t. Road Chaudagra FATEHPUR UP
5	E/50723/2015	**Gokul Foods Pvt Ltd** Village Gudhrolli, G.t. Road Chaudagra FATEHPUR UP

Name and Address of Respondent

6 C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,
UTTAR PRADESH-226001

7 C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,
UTTAR PRADESH-226001

8 C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,
UTTAR PRADESH-226001

C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,
UTTAR PRADESH-226001

10

C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,
UTTAR PRADESH-226001

Other Appellants and Respondents as per Annexure

Copy To

11 Advocate(s) / Consultant(s):

AMIT AWASTHI
ADVOCATE
7/116A, H-1, 1ST FLOOR,
RADHEY APARTMENT,
SWAROOP NAGAR,
KANPUR- 208002

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12 Bar Association, CESTAT, Allahabad

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

14 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

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

19 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

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

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

22 C.D.R. 23 Office Copy 24 Second Folder Copy 25 Guard File

Asstt. Registrar

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

APPEAL Nos. E/50719-50723/2015-EX[DB]

(Arising out of Order-in-Appeal No.246-250-CE/APPL-LKO/LKO/2014 dated 25/11/2014 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Lucknow)

M/s Gokul Foods Pvt. Ltd. **Appellant(s)**

Vs.

Commissioner of Central Excise, Lucknow **Respondent(s)**

Appearance:

Shri Amit Awasthi (Advocate) for Appellant(s)
Shri Rajeev Ranjan (Joint Commr.) AR for Respondent(s)

CORAM:

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

Date of Hearing : 03/10/2017
Date of Decision : 03/10/2017

FINAL ORDER NOs. 71245-71249/2017

Per: Anil Choudhary

The above stated appeals are arising out of impugned Order-in-Appeal No. 246-250-CE/APPL-LKO/LKO/2014 dated 25.11.2014 having a common issue. Therefore, they are taken together for decision.

2. The brief facts of the case are that the appellants are manufacturer of biscuits. During the manufacture of biscuit, sugar syrup is prepared to be used in making of biscuits. It appeared to Revenue that the sugar syrup was classifiable

under Tariff Item No. 17029090. Prior to 03.05.2007 the final products manufactured by the appellants were attracting Central Excise Duty @ 8% ad-valorem, therefore the intermediate products were exempted from payment of Central Excise Duty in term of Notification No. 67/1995-CE dated 16.03.1995. However, w.e.f. 03.05.2007 all goods manufactured by appellant bearing MRP less than Rs. 100/- per kg were exempted under Notification No. 22/2007-CE dated 03.05.2007 and, therefore, the benefit of Notification No. 67/1995-CE of 'sugar syrup' as on intermediate product became inapplicable. Therefore, the appellants were issued various show cause notices demanding Central Excise duty on intermediate product on sugar syrup, captively consumed, in the manufacture of biscuits. The various show cause notices were adjudicated through various Orders-in-Original where the demands were confirmed. Aggrieved by the said Orders-in-Original appellant preferred appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) through above stated common Orders-in-Appeal upheld the Orders-in-Original, however was pleased to remand with the direction(s) to allow Cenvat Credit on inputs and re-calculated the demand, interest and penalty. Aggrieved by the said orders in appeal, appellant is before this Tribunal.

3. Heard the learned counsel for the appellant who has submitted that the issue is no more res-integra in view of the

various Final Orders passed and issued by this Tribunal including order issued by this Bench in respect of M/s Bhagwati Food Private Ltd. He has submitted a copy of Final Order Nos. 70409-70417/2016 dated 30.06.2016, passed by this Bench, in respect of appeal filed by M/s Bhagwati Food Pvt. Ltd. and others in Appeal Nos. E/51610-51618/2015 and submitted that this Tribunal had allowed appeal by setting aside the impugned Order-in-Appeal, in the said appeal, on the same issue, in favor of the assessee

4. Heard the learned AR who has agreed that the present appeals are squarely covered by Final Order of this Tribunal in above stated case.

5. Having considered the rival submissions from both sides and on perusal of record we find that this Tribunal relied on the decision by Coordinate Bench in the case of Rishi Bakers Pvt. Ltd., Kanpur decided vide Final Order Nos. 50759-50764/2015 dated 03.03.2015, reported at 2015 (378) ELT 634 (Tri. Delhi) and held that there was no evidence to prove that 'sugar syrup' captively consumed is classifiable under Tariff Item No. 17029090, nor there is any evidence to prove that the goods in question, in the form in which they come into existence in the appellants' factory, are marketable. In view of such finding it was held that sugar syrup coming into existence during the manufacture of biscuits was not attracting Central Excise duty. In view of same issue in the

Aa

present case, we hold that sugar syrup coming into existence during manufacture of biscuits and captively consumed, does not attract Central Excise duty for the reason that there is no evidence that the same is marketable. We therefore allow all the appeals. The appellants shall be entitled for consequential benefit in accordance with law.

(Dictated and pronounced in Court)

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

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

Ankit

प्रमाणित प्रति/Certified True Copy
31\10\17
सहायक पंजीकार/Asstt. Registrar
(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001