CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 21757 of 2016

(Arising out of Order-in-Original No. BLR-EXCUS-005-COM-33/16-17 dated 20.10.2016 passed by Commissioner of Central Excise & Service Tax, Bangalore.)

Best Food Enterprises
Shed No B-62, Kssid Industrial Area Pillgumpa,
Hoskote, Karnataka – 562114. ....**Appellant**

VERSUS

Pr. Commissioner of Central Tax, Bangalore
4th Floor, TTMC HAL Airport Road,
Domlur, Bangalore,
Karnataka – 560071. ……..**Respondent**

AND

Central Excise Appeal No. 21758 of 2016

Central Excise Misc. No. 20333 of 2025

(Arising out of Order-in-Original No. BLR-EXCUS-005-COM-33/16-17 dated 20.10.2016 passed by the Commissioner of Central Excise & Service Tax, Bangalore.)

Best Food Enterprises
Abdul Nazer, Managing Partner
Shed No B-62, Kssid Industrial Area, Pillgumpa,
Hoskote, Karnataka – 562114. ....**Appellant**

VERSUS

Pr. Commissioner of Central Tax, Bangalore
4th Floor, TTMC HAL Airport Road,
Domlur, Bangalore,
Karnataka – 560071. ……..**Respondent**

APPEARANCE:

Mr. B. G. Chidananda, Advocate for the Appellant.
Mr. Rajashekar. B. N. N, Authorized Representative (AR) for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order Nos. 22241-22242 /2025

Date of Hearing: 14.10.2025
Date of Decision: 14.10.2025

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding demand confirmed by invoking extended period of limitation and imposition of penalty.

2. The brief facts are the Appellant is engaged in manufacture of Food preparation of Idli /Dosa batter and on scrutiny of the documents submitted during registration, department has come to know that appellant is also manufacturing food preparation during the previous Financial Year and failed to obtain registration. Accordingly Show Cause Notice (SCN) was issued on 11.09.2015 demanding excise duty for the period from 01.03.2011 to 31.07.2013 along with interest and also proposing penalty on appellant as well as the Managing Partner. Thereafter, Adjudication authority as per the impugned order classified the goods, confirmed the demand and appropriated the amount paid by the appellant and also imposed penalty on appellant as well as Managing Partner. Aggrieved by said order present appeals are filed.

3. When the appeals came up for hearing, Learned Counsel for the appellant submits that even if assume that the allegation that the goods manufactured by the appellant are subjected to excise duty mere non-payment of duty is not equivalent to collusion, wilful misstatement, fraud or suppression to invoke the extended period of limitation. In this regard Learned counsel draws our attention to decision of the Hon’ble Supreme Court in the matter of **Uniworth Textiles Ltd. Vs. CCE – 2013 (288) ELT 161 (SC).**

4. Learned Counsel further submits that as per the judgment of the Hon’ble Supreme Court in the matter of **Pushpam Pharmaceuticals Vs. Collector, reported in 1995(78) ELT 401(SC)** wherein it was

extended period of 5(five) years is not applicable just for any omission of assessee unless there is evidence of deliberate intent to escape /evade duty.

5. Learned Counsel submits that the appellant had no knowledge of the new levy being introduced and appellant also recorded the transaction in their books of accounts which also shows that the appellant has not collected excise duty on the goods sold /cleared which proves that appellant has no knowledge regarding excisability of the goods. Further excisability of the goods manufactured by the appellant were notified only on 01.03.2011 and it is being a new levy it cannot be alleged that appellant has supressed the fact. Learned counsel further submits that on introduction of Section 11A(2) of the Act appellant voluntarily registered with department and paid excise duty with interest and 1% penalty as per the law. Fact being so, issue of Show Cause Notice is prima facie unsustainable. In this regard, Learned Counsel draws our attention to the Judgment of the Hon'ble High Court of Karnataka in the matter of **CCE Vs. Adecco Flexion Workforce Solutions Ltd., - [2012(26) STR 3 (Kar)],** wherein it is held that when the assesse has paid tax and interest for delayed payment before issuance of show cause notice, authorities are not mandated to issue show cause notice. Learned Counsel also relied on the decision in the matter of **CCE. Vs. H.M.M. Limited., 1995 (76) ELT 497 (SC)** where it is held that inference of intent to evade payment cannot be drawn automatically, and that the show cause notice must point out specifically as to which of the various commissions were committed by the assessee under section 11AC of the Act. In the absence of any such allegation in the show cause notice, invoking extended period of limitation and penalty are unsustainable.

6. Learned Counsel also submits that the classification adopted by the appellant under Chapter Heading 2106 of the Central Excise Tariff, 1985 is also unsustainable since there is no reason to classify the goods as ready to eat packaged goods. In the absence of any explanation for adopting such classification, demand confirmed under such category is unsustainable.

7. As regards Appeal No. 21758/2016 filed by Co-Noticee, Learned Counsel submits that penalty on the appellant being a Managing partner is unsustainable. There is no proposal in the impugned order for invoking the confiscation of goods and in the absence of any such proposal penalty on Managing Director under Rule 26 is unsustainable. Further submits that no penalty can be imposed on the appellant since there is no allegation that the appellant has acquired possession of, or in anyway concern in transporting, removing, depositing, keeping etc., any excisable goods which he knows as or has reason to believe are liable for confiscation to impose penalty under Rule 26 of the Central Excise Rules, 2002.

8. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order. As regarding classification of Idli /Dosa Batter, Wheat /Maida Parota, Appam, Diamond cuts (pettyappam), Rose cookies (achappam); Learned AR draws our attention to the finding in the impugned order where it is held that;

> "From the brochures available on the file, it is observed these Idli Dosa Batter, Wheat /Maida Parota, Appam, Diamond cuts (pettyappam), Rose cookies (achappam) are ready to eat food preparations.
>
> I find that the SCN in the first para itself narrates that the appellant is a manufacturer of food preparations viz., Idli Dosa Batter, Wheat /Maida Parota, Appam, Diamond cuts (pettyappam), Rose cookies (achappam) falling under CETH 2106 90 99 of the first schedule to the Central Excise Tariff Act, 1985. Let me verify whether the same is correct or not.
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> a) Idli /Dosa Batter and Wheat /Maida Parota:- Chapter 21 covers miscellaneous edible preparations and Chapter Heading 2106 covers food preparations not elsewhere specified or included. As per supplementary Note 5 to this chapter, "Heading 2106 (except tariff items 2106 90 20 and 2106 90 30) includes.....b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for

human consumption." These preparations are for use after processing of cooking. Idly / Dosa batter is dual purpose batter which is ready to use as idli or dosa which contains ingredients like Rice, urad dal, methi and water. For use as idli, same is to be cooked in the idli stand and for use as dosa, the same is to be heated in a tawa with ghee or vegetable oil. Parota contains Wheat (Atta) or Maida as the case may be, purified water, vegetable oil and iodized salt which has to be just heated on tawa with ghee. These are ready to use preparations for use for human consumption. These are sold in retail packing, with MRP affixed on the packages. Hence, these goods merit classification under Chapter Subheading 2106 90 99.

b) Appam, Diamond cuts (pettyappam). Rose cookies (Achappam): Ingredients used for making Rose cookies are maida, sugar, refined palm oil, sesame seeds, cumin seeds and egg. Ingredients used for making Appam are maida, sugar and refined palm oil. Ingredients used for making Diamond cuts (Pettyappam) are maida, sugar, refined palm oil. Ingredients used for making Rose cookies (Achhappam) are maida, sugar, refined palm oil, thill, cumin seeds and egg in very small proportion (which is not a key raw material). As these items are ready to eat, by supplementary note 6 of Chapter 21, merits classification under 2106 90 99 as ready to eat preparations. Thus, it is rightly classifiable under CHSH 2106 90 99 as envisaged in the first para of the SCN.

17.2. Further, I find that the assessee has got registered himself with the Central Excise Department after the search of the factory premises in March 2012 and has also not filed the returns for March 2012. In the said return, the assessee has mentioned the description of the goods as "Idli /Dosa Batter, Wheat /Maida Parotas, Rose Cookies (Achappam), Diamond Cuts (Pettyappam), and Appam" and has classified the same under CTSH 2106 90 99. Hence, it goes to prove beyond doubt that the assessee was very much clear in classifying his goods under CTSH 2106 90 99. The

Department has also had no objection to the said classification mentioned in the ER-1 returns filed by the assessee for the month of March 2012 onwards. Since, the classification of the goods was not in dispute and the same is not objected by the Department, I hold that the classification of the Ready to eat packaged food viz. Idli /Dosa Batter, Wheat /Maida Parotas, Rose Cookies (Achappam), Diamond Cuts (Pettyappam), and Appamunder CHSH 2106 90 99 as envisaged in the first para of the SCN, is correct.

I hold that the impugned goods cleared by the assessee during the period from 01.03.2011 to 31.07.2013 without payment of duty are assessed to MRP based assessment under section 4A of the Central Excise Act, 1944 and hence the duty amount of Rs. 71,86,250/- being the duty payable on the said goods needs to be confirmed."

9. Heard both sides and perused the records.

10. As regards classification, we find that Adjudication Authority has rightly classified the goods under Central Excise Tariff Heading (CETH) 21069099 and it is sustainable. However, the excisability of the goods manufactured by the appellant were notified only on 01.03.2011 and being a new levy, it cannot be alleged that appellant had suppressed facts for evasion of duty. The inference of intent to evade payment cannot be drawn automatically, and the show cause notice must point out specifically as to which of the various commissions were committed by the appellant under section 11AC of the Act. In the absence of any such allegation in the show cause notice, confirming demand by invoking extended period of limitation and penalty are unsustainable. Accordingly, Appeal No. E/21757/2016 partially allowed by confirming the demand along with interest for normal period and penalty imposed on the appellant are set aside.

11. As regarding Appeal No. E/21758/2016, we find that there is no proposal in the impugned order for invoking confiscation of the goods and in the absence of any such proposal, imposing penalty on Managing

partner of the appellant is unsustainable. Accordingly, Appeal No. E/21758/2016 is allowed by setting aside the penalty.

12. The Miscellaneous application filed by the appellant for change of cause title is allowed.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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