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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/5207/2004 - EX[DB] Date 20/10/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SHRI VARALAKSHMI COMPANY
NO.3 KOMARAPALAYAM P.O.
MALLUR,RASIPURAM NAMAKKAL DISTT. TAMILNADU
636203

M/S SHRI VARALAKSHMI COMPANY Appellant
Vs
C.C.E.SALEM Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 761/08- **EX[DB]** dated 07-8-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E.SALEM
   FOULKS COMPOUND,ANAI ROAD SLAEM
   636001
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 5207 of 2004

(Arising out of Order-in-Original No. 19/2004 (Commr) dated 15.7.2004 passed by the Commissioner of Central Excise, Salem)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR. MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities.	

M/s Shri Varalakshmi Co.

Appellant

Vs.

CCE, Salem

Respondent

Appearance:
Shri Ravi Raghvan, Advocate - For appellant
Shri M.M. Singh, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 7.8.2008

FINAL Order No. 761/08-SM dated............

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal against the impugned order where the demand was confirmed on wet starch.

3. The appellants are engaged in the manufacture of sago which is exempted from payment of Central Excise duty. The manufacturer of sago as explained by the appellant is as under :-

> *Tapioca is washed, cleaned and the bark is removed and crushed in the mill and all sediments and wastes are removed in various successive tanks and tapioca milk is obtained.*
>
> *The tapioca milk is agitated and filtered in a sieve and purified milk is obtained. After removal of water from upper layer, the bottom layer is allowed to precipitate for 3 hours for sedimentation and after supernatant excess water is drained and the fine* ***starch slurry*** *is obtaining containing a moisture content of 40 to 45%.*
>
> *The nice slurry is fed on to the mechanically agitating jute cloth sieve where sago globules are made to form and then the globules are transferred to a sieve of certain size to obtain even sized globules.*
>
> *Then they are fed into the roasting pan smeared with coconut oil to remove the*

for 6 hrs and then fed into the rotating plate rollers to get themselves separated and then packed into bags for marketing."

4. The case of the Revenue is that wet starch which is an intermediate product is liable to excise duty as the final product sago is exempted from payment of duty.

5. The contention of the appellant is that final product is manufactured in a continuous process and starch slurry comes into existence during the manufacture of final product which is not marketable or not capable of being marketed as the same contains a moisture content of 40 to 45% and it has also no shelf life. The appellant relied upon the report of SGS India. The sample was sent for shelf life studies to the laboratory and vide communication report dated 29.9.99, the laboratory informed that the sample received was in spoiled condition as time taken for the sample to reach the laboratory is almost 15 hours, therefore, they are unable to analysis the shelf life. The appellant also submitted that the Commissioner (Appeals) in the case of

another manufacturer of sago dropped the demand in respect of starch slurry vide Order-in-Appeal No. 82/2005 dated 17.9.2005. The appellant also relied upon the decision of the Tribunal in the case of **Maize Products Vs. CCE** reported in 1987 (29) ELT 321 where the Tribunal held that starch slurry being an intermediate product and being neither marketed nor marketable, not liable to levy of excise duty.

6. The contention of the Revenue is that during the manufacture of sago starch slurry comes into existence and on reduction of moisture contents the same is being capable of being marketed as wet starch as evident from the finding of the order passed by the Commissioner (Appeals). It is also submitted that the test report given by SGS India, where it is clearly certified that the odour of decomposition was observed after 24 hrs. at room temperature and if the wet starch is stored at chilled temperature, preferably below 10 degree it will be prolonged shelf life. In view of this report the contention

of the Revenue is that the product in question has shelf life of more than 24 hrs. and it is capable of being marketed.

7. We find that in this case the demand is in respect of intermediate product starch slurry which comes into existence during the manufacture of sago which is exempted from payment of duty. The appellants are manufacturing sago in a continuous process from tapioca. The manufacturing process as explained by the appellant is not in dispute. In respect of marketability, we find that the Commissioner (Appeals) in the case of M/s Kumar Sago Factory vide order dated 17.9.2005 dropped the demand in respect of starch slurry which was raised on the same grounds as in the present case. The Commissioner (Appeals) held that starch slurry is not marketable. The Commissioner (Appeals) held that during the manufacture of sago starch slurry come into existence and undergoes further reduction of moisture content up to 10-15% to become wet starch and this process has not been carried out by the manufacturer of sago and what

remains as an intermediate product. is only the starch slurry in the crude form and the starch slurry is prone to fermentation. The Commissioner (Appeals) also relied upon the decision of the Tribunal in the case of **Maize Products** (supra). In the present case also, we find there is no evidence on record that wet starch comes into existence during the process of manufacture of sago. In these circumstances, as the starch slurry is not capable of being marketed, we find the impugned order is not sustainable hence set aside. The appeal is allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM