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

Appeal No. C/193-194, 299 & 316 /2007 - CU[DB] with C/CROSS/197 OF 2007 Date 30/01/2009

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S KANPUR EDIBLES PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.**C/31-34/09-CUS. DATED 27.01.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
M/S KANPUR EDIBLES PVT. LTD.
51/58, SHAKKARPATTI, KANPUR.
2. Adv. / Consult 1.R. SANTHANAM, ADV. C/3/210, JANAK PURI, N.D. – 58.
2. MR. MOHAN LAL, B-67, FLATTED FACTORIES, COMPLEX, OKHLA PHASE-III, NEW DELHI.

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

17. M/S SURYA FOOD & AGRO LTD.
D-1, SECTOR-2, NOIDA, U.P.

11-2-09
ISSUED ON

Assistant Registrar
(Customs Appeal Branch)

Signature
(Despatch Section)
CESTAT, New Delhi

Coram : Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No. C/31-34/09

Per M. Veeraiyan:

The Department's Appeal No.C/299/07 with M/s Kanpur Edibles as respondents and Cross-Objection No.197 filed by the Kanpur Edibles. Appeals No.C-193-194/07 filed by M/s Kanpur Edibles, and Appeal No.C/316/07 filed by M/s Surya Foods,(who purchased on high-sea-basis from M/s Kanpur Edibles) involve common issues and therefore, they are being dealt with by a common order.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) M/s Kanpur Edibles Pvt. Ltd. were manufacturing till 2004 what are known as Bakery Shortening agents. It was reportedly being classified under 1504 till 2004. M/s Kanpur Edibles started importing the same from Sri Lanka from December 2005 onwards. Initially, they filed bill of entry claiming classification of the said item under Chapter 1516 corresponding to erstwhile Chapter 1514 and also exemption under 4/05 in so far as the same relates to CVD. Subsequently, several bills of entry have been filed claiming classification under 1517 and claiming the benefit of exemption Notification No.6/02 as amended;

b) A show cause notice dated 20th April, 2006 was issued by the Assistant Commissioner proposing that inasmuch as they have claimed classification under 1517 , the benefit of exemption 6/02 is not available on the ground that they have imported goods with a brand name and they were packed in 15 kgs., thus not satisfying one of the conditions of the said notification.

c) In reply to the notice, Kanpur Edibles Pvt. Ltd. changed their stand on classification and submitted that the product imported by them will be classifiable under 1516 and that they are fully exempted under Notification No.4/05. The original authority confirmed the classification under 1517 and disallowed the exemption. However, the Commissioner (Appeals) accepted the classification under 1516 and set aside ~~that~~ the entire demand. The Department is in appeal against this order.

availed the benefit under Indo-Sri Lanka Free Trade Agreement. The parties have received invoices indicating the product as classifiable under 1517. The DGFT authorities vide Public Notice No.7/2008 dated 22.4.2008 have treated that this bakery shortening is a product failing under 1517. He also relies on the HSN Explanatory Notes in support of his claim that shortening are classifiable under 1517 and submits that the goods referred to as shortening should include bakery shortening as well. He also relies on the decision taken in the Chief Commissioners' Conference held in Mumbai, to the effect that that bakery shortening should be classified under 1517 as seen from the communication F.No.528/75/2003-Cus (TU) dated 28.6.06 addressed to all Chief Commissioners of Customs.

6. We have carefully considered the submissions made from both sides. At the outset , we notice that there has been change in the tariff from 1.3.05 . The interpretation of Notifications 6/02, 56/04, 4/05 and 3/06 in relation to the imported product require to be considered taking into account the various changes that have been brought in the notifications. Commissioner (Appeals) has taken a decision in favour of the parties and some of the evidences relied upon by the learned DR were not before Commissioner (Appeals). Commissioner, on the other hand, did not go into the classification holding that the same was beyond the scope of the show cause notices. In the matter of classification there is a contrary finding by the Commissioner and the Commissioner (Appeals) for varying reasons. Both sides have raised the relevant points before us in support of the respective stand but some of them have not been appreciated at the original stage. Considering the importance relating to arriving at the correct classification, we deem it proper to set aside the order of the Commissioner , the order of the Commissioner (Appeals) and the order of the Assistant Commissioner and remand the matter to Commissioner so as to avoid multiplicity of the proceedings. The parties are free to raise all issues relating to classification, eligibility of exemption Notifications. The parties are directed to place their submissions along with evidence relied upon within 45 days from the date of receipt of this

All the communications should be addressed to the Registrar, Supreme Court by designtion, NOT by name
Telegraphic address:-
"SUPREMECO"

SUPREME COURT
INDIA
NEW DELHI

D.NO. 3529/2009/SEC.III
DATED:- 09/10 /2009

FROM:-THE ASSISTANT REGISTRAR
SUPREME COURT OF INDIA.

TO: THE REGISTRAR,
CUSTOMS EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM,
NEW DELHI-110 066

CIVIL APPEAL NOS.6384-86 OF 2009
[Ref: Tribunal's Final Impugned Order dated 27.01.2009 in Appeal Nos.193-194 of 2007 and in Cross Objection No.197 of 2007]

M/s Kanpur Edibles Pvt.Ltd. ....Appellant

-Versus-

Commissioner of Customs & Central Excise ...Respondent

Sir,

I am directed to forward herewith a Certified copy of the Record of Proceedings dated 7th October, 2009 in the appeals above-mentioned for your information and necessary action.

Yours faithfully,

ASSISTANT REGISTRAR

Encl. As above.

~~Copy to:-~~
~~Mr.Vineet Bhagat, Advocate~~,
~~118, M.C.Setalvad Chamber~~s

~~ASSISTANT REGISTRAR~~

341 DR(J)
15/10/09

FD.C/31-34/09

15.10.2009

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13/10/09

Forward to Customs Branch.

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ITEM NO.25(MM) COURT NO.4 SECTION III

S U P R E M E   C O U R T   O F   I N D I A

RECORD OF PROCEEDINGS

CIVIL ~~APPEAL NO(S). 6384-86~~ OF 2009

Certified to be true Copy
Assistant Registrar (Judl.)
10-10-2009
Supreme Court of India

M/S.KANPUR EDIBLES PVT.LTD. Appellant (s)

VERSUS

COMMISSIONER OF CUSTOMS & CENT.EXCISE Respondent(s)

Date: 07/10/2009 These Appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Appellant(s) Mr. K.G. Bhagat, Adv.
Mrs. Manju Bhagat, Adv.
Mr. Manohar Singh Bakshi, Adv.
Mr. Satya Priya Kamra, Adv.
Mr. Vineet Bhagat, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

List the matter on the date notified.

Till then the directions contained in the impugned order of the Customs Excise and service Tax Appellate Tribunal, New Delhi, shall remain stayed.

8/X

(Sheetal Dhingra)
Court Master

(Phoolan Wati Arora)
Court Master

08/10