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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

Date 20/07/2010

Appeal No. E/820 /2010 - EX[DB] WITH
E/S/865/2010-EX

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

To :
M/S J.B. MANGHARAM FOODS PVT. LTD.
GOLA KA MANDIR, P.O.RESIDENCY,
GWALIOR (M.P.)
M/S J.B. MANGHARAM FOODS PVT. LTD. Appellant

Vs

C.C.E. INDORE Respondent

STAY ORDER NO.489/2010-EX

I am directed to transmit herewith a certified copy of **Final order No. 459/ 2010 EX[DB]** dated 12-7-10 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. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
   MR.R. KRISHNAN
   297-E, POCKET-II, PHASE-I, MAYUR VIHAR DELHI-110091.
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise, I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Stay Application No. 865 of 2010 in
Excise Appeal No. 820 of 2010

DATE OF HEARING : 12.07.2010
DATE OF DECISION : 12.07.2010

M/s J.B. Mangharam Foods Pvt. Ltd. .... **Appellants**
(Rep by Sh. R. Krishnan, Adv.)

VERSUS

CCE, Indore .... **Respondent**
(Rep. by Sh. K.P. Singh, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

STAY **ORAL ORDER NO.** 489/10-EX

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard the learned advocate for the appellants and the learned DR for the respondent.

2. As we proposed to dispose of the appeal itself, the application is allowed while waiving the requirement of pre-deposit and directing the Registry to place the appeal for final hearing forthwith. Application stands disposed of accordingly.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Golay

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 820 of 2010

(Arising out of Order-in-Original No. 01-02/Commr/Cex/Ind/2010 dated 08.01.2010 passed by the Commissioner of Central Excise, Indore).

DATE OF HEARING : 12.07.2010
DATE OF DECISION : 12.07.2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, 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 ?	Yes
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	No
3.	Whether their Lordships wish to see the fair copy of the Order ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	Y

M/s J.B. Mangharam Foods Pvt. Ltd. .... **Appellants**
(Rep by Sh. R. Krishnan, Adv.)

VERSUS

CCE, Indore .... **Respondent**
(Rep. by Sh. K.P. Singh, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL **ORAL ORDER NO.** 459/10-Ex

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard the learned advocate for the appellants and the learned DR for the respondent.

2. This appeal arises from the order dated 08.01.2010 passed by the Commissioner, Gwalior. By the impugned order, the Commissioner has confirmed the demand of Rs. 7,37,92,949/- against the appellants along with penalty of equal amount.

3. The demand has been confirmed essentially on the ground that the appellants failed to maintain separate accounts in respect of the inputs and the credit earned thereon utilized in the manufacture of dutiable and non-dutiable final products.

4. The appellants are engaged in the manufacture of biscuits classifiable under Chapter Heading 19053100 of the Schedule to the Central Excise Tariff Act, 1985. The appellants are availing cenvat credit facility and they are clearing final products on payment of duty as well as nil rate of duty in terms of Exemption Notification No. 3/2006-CE dated 01.03.2006 as amended by Notification No. 22/2007-CE dated 03.05.2007 in respect of the goods having MRP upto Rs. 100/- per kg. Show cause notices came to be issued to the appellants on the ground that they had failed to maintain separate accounts in relation to the inputs and the credit earned thereon as regards the utilization thereof in dutiable and non-dutiable final products as was otherwise required to be maintained in terms of Rule 6(2) of the Cenvat Credit Rules, 2004. The notices were contested by the appellants including the ground that in case of non-maintenance of

such records, they are entitled for the benefit as contemplated under sub-rule 3(ii) read with sub-rule (3A) of Rule 6 of the said Cenvat Credit Rules, 2004 and they cannot be saddled with the liability of an amount equal to 10% of the value of the exempted goods w.e.f. 01.04.2008.

5. The learned advocate for the appellants submitted that, in spite of above referred specific defences having been raised, the authority below ignored the same and saddled the appellants with the liability of an amount equal to 10% of the value of the exempted goods contrary to the provisions of law.

6. We have heard at length the learned advocate for the appellants and the learned DR for the respondent and perused the records.

7. The impugned order nowhere discloses consideration of the point which is sought to be canvassed on behalf of the appellants. Perusal of the reply filed by the appellants to the show cause notice read with the written submissions made on the date of hearing before the Commissioner clearly discloses that the above point was specifically raised on behalf of the appellants. In the circumstances, it was necessary for the Commissioner to consider the said point and to decide as to whether the appellants are entitled for the benefit in terms of sub-rule 3(ii) read with sub-rule (3A) of Rule 6 of the Cenvat Credit Rules, 2004 or not. The finding of the Commissioner that the only remedy is under Rule 6(3)(i) of the said Rules and thereby to pay the amount equal to 10% of the value of the exempted goods is not correct. Sub-rule (3) of Rule 6 clearly gives option to the manufacturer in this regard

and once the said option is given, it will be for the manufacturer to make the choice. Once specific plea in this regard was raised, it was necessary for the Commissioner to deal with the same and arrive at correct finding on assessment of the material on record and on application of the provisions of law. Having failed to do so, the impugned order cannot be sustained and is liable to be set aside and the matter remanded to the Commissioner to decide the same afresh after hearing the parties. In the result, on the limited point, as stated above, the impugned order is set aside and the matter is remanded to the Commissioner, Indore, to decide the same afresh after hearing the parties in accordance with the provisions of law. The appeal stands disposed of accordingly.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Golay