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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/M/755,754/2010-EX(DB) Date 26/11/2010
E/906 /2010-907,964,965/2010 - EX[DB]

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

To :
M/S. RAMA KRISHAN BAKERS PVT. LTD. ← 19-SH. RAJIV [redacted] TALREJA. DIRECTOR
54-B, CO-OPERATIVE INDUSTRIAL ESTATE,
UDYOG NAGAR, KANPUR
208022

M/S. RAMA KRISHAN BAKERS PVT. LTD. Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 797-800 Misc. O. No. 665-666 **2010 EX[DB]** dated 15.11.2010 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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult MS. APARNA, ADV.
   POST OFFICE BULDG, 2ND. FLOOR,ANDHERI-KURLA ROAD,
   J.B. NAGAR, ANDHERI (EAST) MUMBAI-400059
3. S.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
17. M/S SWATI BISCUT MFG. CO. ← 18 · SH. OMPRAKASH SHYAMDASANI, PARTNER
    54-55, GOVT. INDL. AREA, PANKI,
    KANPUR-208022

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:15.11.2010

Central Excise Appeal No.906 of 2010

Arising out of the order in appeal No.66-67/CE/Appl/KNP/2010 dated 4.2.2010 passed by the Commissioner of Central Excise (Appeals), Kanpur.

Central Excise Appeal No.907 of 2010

Arising out of the order in appeal No.66-67/CE/Appl/KNP/2010 dated 4.2.2010 passed by the Commissioner of Central Excise (Appeals), Kanpur.

Central Excise Appeal No.964 of 2010

Arising out of the order in appeal No.70-71/CE/Appl/KNP/2010 dated 4.2.2010 passed by the Commissioner of Central Excise (Appeals), Kanpur.

Central Excise Appeal No.965 of 2010

Arising out of the order in appeal No.66-67/CE/Appl/KNP/2010 dated 4.2.2010 passed by the Commissioner of Central Excise (Appeals), Kanpur.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter 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 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?	Yes

M/s Rama Krishna Bakers Pvt. Ltd. ... Appellants
Rajiv Talreja, Director

Vs.

C.C.E., Kanpur .... Respondent

M/s Swati Biscuit Manufacturing Company ... Appellants
Om Prakash Shyamdasani, Partner

Vs.

C.C.E., Kanpur .... Respondent

Appearance:

Ms. Aparna, Advocate for the appellants/applicants
Shri R.K. Verema, Authorized Departmental Representative (JDR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Oral Order No. 797-800/10-EX

Per Shri Justice R.M.S. Khandeparkar:

These appeals are taken up for hearing in terms of the order in Excise Stay Applications Nos.967,968, 1021, 1022 of 2010.

2. Heard the Advocate for the appellants and the DR for the respondent. The dispute in the matters relates to the question of marketability of syrup used in the final product manufactured by the appellants, which is undisputedly exempted from payment of duty. The similar issue had arisen in Appeal No.E/1034 of 2010 and connected matters disposed of on 23.8.2010.

3. Perusal of the impugned orders discloses that the authorities below have proceeded to impose duty liability without ascertaining the issue relating to marketability and without analyzing the materials on record in proper perspective to hold that the product is marketable.

4. The authorities below while dealing with the said issue have to decide the same with reference to the product in question independently of the similar issue relating to the final product. Bare perusal of the impugned order discloses that the authorities below have confused the issue of marketability regarding the final product with that of intermediate product. Merely because the final product is marketable, it may not necessarily be said that the intermediate product has necessarily to be marketable one. The authorities below do not appear to have applied their mind to the relevant aspect of the matter.

5. For the above reasons, therefore, the impugned orders are not maintainable and are liable to be set aside and matters are to be remanded to the adjudicating authority to decide the issue of marketability relating to the product in question

independently of similar issue relating to the final product and bearing in mind the observations made by the Tribunal in Final Orders Nos. 673-675/2010-Ex. dated 23.8.2010 in Excise Appeal No.1034/2010 and connected matters.

6. Appeals accordingly stand disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:15.11.2010

Miscellaneous Application No.755 of 2010 in
Central Excise Appeal No.906 of 2010

M/s Rama Krishna Bakers Pvt. Ltd. ... Appellants

Vs.

C.C.E., Kanpur .... Respondent

Miscellaneous Application No.754 of 2010 in
Central Excise Appeal No.964 of 2010

M/s Swati Biscuit Manufacturing Company ... Appellants

Vs.

C.C.E., Kanpur .... Respondent

Appearance:

Ms. Aparna, Advocate for the appellants/applicants
Shri R.K. Verema, Authorized Departmental Representative (JDR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

Misc Oral Order No. 665-666/10-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the Advocate for the appellants and the DR for the respondent. These applications are for modification of Order dated 6.8.2010 passed in the Stay Applications directing the appellants to deposit the amount demanded under the impugned order.

2. Perusal of the order dated 6.8.2010 apparently discloses that the same was passed in the absence of the Advocate for the appellants and solely on the ground that the appellants had paid duty on the product in question for the period from March, 2007 to June, 2008 but failed to pay the same thereafter.

3. Learned Advocate for the appellants has drawn our attention to letter dated 31.7.2008 by the appellants to the Assistant Commissioner, Kanpur wherein it was informed that the product in question being non-excisable in the absence of any marketability for the same. The question of payment of duty did not arise. She has

also drawn our attention to our earlier order in appellant's own case in relation to the same product passed on 8.2.2010 in Stay Applications Nos.2918 and 2919 of 2009 respectively wherein it was clearly observed that "In the absence of marketability aspect being satisfied, we find it difficult to agree with the finding therein by the authorities below while classifying the case of the product in question and demanding duty under the impugned order".

4. Evidently, neither the said letter dated 31.7.08 nor the order dated 8.2.202010 was brought to our notice while deciding the matter on 6.8.2010 in the matter in hand.

5. Considering the facts as stated above, the same clearly justify that the grievance sought to be made by the appellants warrants recall of the order dated 6.8.2010 and justifies the prayer of the appellants for stay of the impugned order without insisting for deposit in the matter.

6. In the result, these applications are allowed and the order dated 6.8.2010 in Stay Applications Nos.967, 968 of 2010 as well as 1021, 1022 of 2010 is hereby recalled, the applications for stay are allowed and the impugned order is stayed without insisting for pre-deposit.

7. Applications, accordingly, stand disposed of with the direction to the registry to place the appeals for final disposal forthwith.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/