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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/461-462 /2010 - EX[DB] ,E/463-464/2010-EX Date **10/02/2011**

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

To :
M/S. RAMA KRISHNA BAKERS PVT. LTD.
54-B, CO-OP. INDUSTRIAL ESTATE, UDYOG NAGAR,
KANPUR (UP)
208022

**M/S. RAMA KRISHNA BAKERS PVT. LTD.** Appellant

Vs

**C.C.E. KANPUR** **STAY ORDER NO. 258-261/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 184-187/ 2011 EX[DB]** dated 31-1-11

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
**MR.M.H PATIL**
POST OFFICE BUILDING, 2ND FLOOR, JB
NAGAR, ANDHERI EAST, MUMBAI-59
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT
16. SHRI RAJEEV TALREJA DIRECTOR, M/S. RAMA KRISHNA BAKERS PVT.

Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. I**

**DATE OF HEARING : 31/01/2011.**
**DATE OF DECISION : 31/01/2011.**

**Excise Stay Applications No. 472 & 474 of 2010 in Appeals No. 461 & 463 of 2010**

M/s Rama Krishna Bakers (P) Ltd. — Appellants

Versus

CCE, Kanpur — Respondent

**Excise Stay Applications No. 473 & 475 of 2010 in Appeals No. 462 & 464 of 2010**

Shri Rajeev Talreja, Director ]
M/s Rama Krishna Bakers (P) Ltd. ] — Appellants

Versus

CCE, Kanpur — Respondent

**Appearance**

Shri R.K. Monga, Company Representative – for the Appellants.

Shri R.K. Verma, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

STAY Order No. 258-261/2011-EX Dated : ______

**Per. Shri Justice R.M.S. Khandeparkar :-**

Since we proposed to dispose of the appeals themselves, the applications are allowed without insisting for deposit with direction to the Registry to place the appeals for final hearing forthwith.

**(Justice R.M.S. Khandeparkar)**
**President**

**(Rakesh Kumar)**
**Member (Technical)**

PK

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. I**

**DATE OF HEARING : 31/01/2011.**
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**Excise Appeals No. 461 and 463 of 2010**

M/s Rama Krishna Bakers (P) Ltd. — Appellants

Versus

CCE, Kanpur — Respondent

**Excise Appeals No. 462 and 464 of 2010**

Shri Rajeev Talreja, Director ]
M/s Rama Krishna Bakers (P) Ltd. ] — Appellants

Versus

CCE, Kanpur — Respondent

[Arising out of the Order-in-Appeal No. 391-392/CE/APPL/KNP/ 2009 dated 15/12/2009 and 276-277/CE/APPL/KNP/ 2009 dated 15/12/2009 both 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, 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 would 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 Department Authorities? | : Yes |

**Appearance**

Shri R.K. Monga, Company Representative – for the Appellants.

Shri R.K. Verma, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final Order No. 184–187 / 2011–EX Dated : __________

**Per. Shri Justice R.M.S. Khandeparkar :-**

These appeals are being heard in terms of order passed today in stay applications No. 472 to 475 of 2010. Since common question of law and facts arise in all these appeals they are heard together and are being disposed of by common order.

2. The present appeals relate to the period from June 2007 to January 2009. The subject matter of the adjudication was the flavoured cream used as intermediatory product in the manufacture of the biscuits by the appellants herein. The issue involved related to the question of marketability of such cream taking into consideration the same being intermediate product. In fact appellants had been using flavoured cream as well as sugar syrup as the intermediatory product in the manufacture of biscuits. While dealing with the similar issue in relation to the sugar syrup, the authorities below had proceeded to impose the duty liability upon the sugar syrup without ascertaining the issue relating to marketability of such product on the ground that the intermediate product loses its identity when used in the final product and, therefore, the marketability of such intermediatory product is to be considered alongwith the marketability of final product. While observing that the issue in relation to the marketability of the intermediate product is to be decided

independently of the issue of marketability of the final product, the Tribunal had set aside that order and had remanded the matter in appeals No. 906-907, 964-965 of 2010 under order dated 15th of November 2010.

3. Perusal of the impugned orders apparently disclose that the authorities below have committed similar mistake in relation to the subject matter in question. The issue of marketability in relation to the flavoured cream has also sought to be confused with the issue of the marketability of the final product. As already held in relation to the sugar syrup under order dated 15th November 2010, for the same reasons, the impugned orders cannot be sustained and are liable to be set aside and the matters remanded to Adjudicating Authority to decide the issue of marketability relating to the product in question independently of similar issue relating to the final product. In this regard, the authority shall bear in mind, the observations made by the Tribunal in the final orders No. 673-675 of 2010-EX dated 23rd August 2010 in excise appeal No. 1034 of 2010 and all connected matters. The impugned orders are, therefore, set aside and the matters are remanded and the appeals are disposed of in above terms.

**(Justice R.M.S. Khandeparkar)**
**President**

**(Rakesh Kumar)**
**Member (Technical)**

PK