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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/198 /2005 - EX[DB] Date **13/06/2011**

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

To :
C.C.E.INDORE M.P
P.B.NO-10,MANIK BAGH PALACE INDORE M.P

C.C.E.INDORE M.P Appellant

Vs

M/S HELLOAGRO FOODS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.470/ 2011 EX[DB]** dated 08-6-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S HELL OAGRO FOODS LTD.
PLOT NO-604,SECTOR-III,PITHAMPUR M.P.

2. Adv. / Consult SH. ASHISH BATRA, ADV, 2360, MAIN PATEL ROAD, WEST PATEL NAGAR, N. DELHI-8
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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT,

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

PRINCIPAL BENCH -1

Excise Appeal No.198 of 2005

(Arising out of Order-in-Appeal No.IND-I/398/2004 dated 19.10.2004 passed by the CCE (A), Indore)

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?	
2	Whether it should 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?	

CCE, Indore — Appellants

Vs.

M/s.Hello Agro Foods Ltd. — Respondent

Present for the Appellant: Shri I.Baig, SDR
Present for the Respondent: Shri Ashish Batra, Advocate

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

Date of Hearing: 06.04.2011
Date of Decision: 8/6/2011

FINAL **ORAL ORDER NO.** 470/2011-EX

PER: RAKESH KUMAR

1. The respondent are engaged in the manufacture of Potato wafers of 'Hello" brand and other snacks items. The dispute in this case is about of classification of "rings". The respondent received dry pellets

made out of flour of rice and wheat and potato from M/s.TTK Pharma Ltd. The dry pellets are fried in refined vegetable oil and after flavouring are packed in unit packs for retail sale. The point of dispute is as to whether these rings packed in unit packs for retail sale, which are ready to eat snacks, are classifiable under sub heading 2108.99 of the Tariff as "other food preparations" and hence eligible for duty exemption under Notification No.4/97 (serial No.3 of the table annexed to the notification) as "Namkeens" or same are classifiable as "Pasta" under heading 19.02 of the tariff. According to the department, since the ingredients used for making the product, in question, are same as those used in making pasta, the product, in question, is classifiable under heading 19.02. The Assistant Commissioner vide order in original No.285/AC/DEMAND/2003 dt.29.7.2003 held that the product, in question, is classifiable as "other edible preparations" under sub heading 2108.99 and is eligible for exemption under Notification No.4/97-CE dated 1.3.1997 and on this basis dropped the duty demand of Rs.1,64,596.31 against them. Revenue filed appeal against the Assistant Commissioner's order and the Commissioner (Appeals) vide Order-in-Appeal No.131-CE/IND/APPL/04 dated 19.10.2004 dismissed the departmental appeal. It is against this order of the Commissioner (Appeals) that the present appeal has been filed by the Revenue.

2. Heard both the sides.

3. Shri I.Baig, learned SDR, assailed the impugned order reiterating the grounds of appeal in the Revenue's appeal and pleaded that since the ingredients of product, in question, are the same as those used for manufacture of pasta, the goods ,in question, would be classifiable

under heading 19.02 of the tariff. He also pleaded that while the Commissioner (Appeals) has relied upon the judgement of the Tribunal in the case of **Pepsi Foods Ltd. vs. CCE reported in 2003 (151) ELT 180**, this judgement of the Tribunal has not been accepted by the department and department has filed civil appeal before the Apex Court where this matter is pending. He, therefore, pleaded that the impugned order is not correct.

4. Shri Ashish Batra, Advocate, the learned Counsel for the respondent, defending the Commissioner's order pleaded that the product, in question, ~~is~~ are made out flour of rice, wheat and potato which is fried in refined vegetable oil and is ready to eat snack; that the product. in question, is Namkeen and is totally different from pasta; that that the same is correctly classifiable under sub heading 2108.99; that being a "Namkeen" the same is exempt from duty under Notification No.4/97-CE; that the Tribunal in the case of **Pepsi Foods Ltd. vs. CCE reported in 2003 (151) ELT 180** in respect of similar class of product "Cheetos" has held that the same are classifiable under sub heading 2108.99 of the tariff; that the product, in question, is similar to he product covered by the Tribunal's judgement in the case of **Pepsi Foods Ltd. vs. CCE** (supra), that this judgement of the Tribunal has not been stayed or set aside and, hence, has been correctly followed by the Commissioner (Appeals); and that in view of the above, there is no infirmity in the impugned order.

5. We have carefully considered the submissions from both the sides and perused the records. Undisputed facts are that the product, in question, is rings made out flour of rice, wheat and potato; ~~these~~ The dry

pellets are obtained by the respondent from M/s.TTK Pharma Ltd. What the respondent do is that dry pellets are fried and after adding salt and flavours, the same are packed in unit containers for sale. The product, in question, is obviously a Namkeen and is totally different from "pasta" covered by heading 19.02 of the tariff. The appellant have not produced any order of the Apex Court staying the operation of the Tribunal's judgement in the case of **Pepsi Foods Ltd. vs. CCE** (supra), where the Tribunal has upheld the classification of similar product "Cheetos" under sub heading 2108.99 of the tariff. Since the goods in question are snacks (Namkeens), the same are covered by serial No.3 of the table of Notification No.4/97-CE dated 1.3.1997 and hence the benefit of duty exemption has been rightly extended. In view of the above, we do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

(Pronounced in the open court on 8/6/11.)

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMEBR (TECHNICAL)

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