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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/801 /2011-802 /2011 - EX[DB] WITH E/S/978-979/2011-EX Date **09/08/2011**

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

To :
M/S ANNAKUT BISCUIT CO. PVT. LTD.,

54-A, UDYOG NAGAR, CO-OPERATIVE INDL.
ESTATE, VIVEKANAND NAGAR, KNAPUR.

M/S ANNAKUT BISCUIT CO. PVT. LTD., Appellant

Vs

C.C.E. KANPUR **STAY ORDER NO. 798-799/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.718-719 2011 EX|DB|** dated 01-8-11

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

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.
15. SHRI NAVEEN KHANNA, DIRECTOR OF,
M/S ANNAKUT BISCUIT CO. PVT. LTD.,
54-A, UDYOG NAGAR, CO-OPERATIVE INDL. ESTATE,
VIVEKANAND NAGAR, KNAPUR.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:01.08.2011

Excise Stay Application No.978 of 2011 in
Excise Appeal No.E/801 of 2011

M/s. Annakut Biscuit Co. Pvt. Ltd. ....**Appellant**

Vs.

CCE, Kanpur ...**Respondent**

Excise Stay Application No.979 of 2011 in
Excise Appeal No.802 of 2011

Mr. Naveen Khanna, Director ....**Appellant**

Vs.

CCE, Kanpur ...**Respondent**

Appearance: Rep. by Shri R.K. Monga, Co. Representative for the appellants.
Rep. by Shri K.P. Singh, DR for the respondent

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

STAY order No. 798-799/2011-EX

Per Justice R.M.S. Khandeparkar:

As we propose to dispose of the appeals themselves, the applications are allowed without insisting for any pre-deposit and Registry is directed to place the appeals for final hearing forthwith. The applications stand disposed of.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

Ckp.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:1.8.2011

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see 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? : Yes

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Excise Appeal No.E/801 of 2011

M/s. Annakut Biscuit Co. Pvt. Ltd. **....Appellant**

Vs.

CCE, Kanpur **...Respondent**

Excise Appeal No.802 of 2011

Mr. Naveen Khanna, Director **....Appellant**

Vs.

CCE, Kanpur **...Respondent**

(Arising out of common Order-in-Appeal No.612-613/CE/APPL/KNP/2010 dated 6.1.2011 passed by the Commissioner of Central Excise, Kanpur)

Appearance: Rep. by Shri R.K. Monga, Co. Representative.
Rep. by Shri K.P. Singh, DR appeared for the respondent.

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

FINAL Order No. 718-719/2011-EX/Dated:01.08.2011

Per Justice Shri R.M.S. Khandeparkar:

Since common issue of law and facts are involved in these appeals, they are taken up together for hearing and are being disposed of by this common order.

2. We have heard Co. Representative for the appellants and Departmental Representative for the respondent.

3. The present appeals relate to the period from July, 2009 to December, 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, the 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 losses its identity when used in the final product and, therefore, the marketability of such intermediatory product is to be considered along with 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 has 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.

4. 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]

Ckp.