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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/697 /2005 - EX[DB]   Date **02/09/2011**

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

To :
C.C.E.JAIPUR-I
N.C.R.B.STATUE CIRCLE C-SCHEME JAIPUR
302005

C.C.E.JAIPUR-I   Appellant
Vs
M/S BAKEWELL AGRO LTD   Respondent

I am directed to transmit herewith a certified copy of **Final order No.789/ 2011 EX[DB]** dated 29-8-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S BAKEWELL AGRO LTD
F-1038, PHASE-III, INDUSTRIAL
AREA, BHIWADI RAJASTHAN

2. Adv. / Consult
MR.AALOK ARORA, ADVOCATE
82-MISSION COMPOUND, SAHARANPUR-247001 (U.P.)

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

Assistant Registrar
(Excise Appeal Branch)

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

Date of Hearing:17.08.11
Date of decision:17.08.11

Excise Appeal No.697 of 2005

[Arising out of Order-in-Appeal No.442(MPM)CE/JPR-1/2004 dated 19.01.2005 passed by the Commissioner of Central Excise (Appeals), Jaipur-I].

CCE, Jaipur-I — Appellants

Vs.

M/s. Bakewell Agro Ltd. — Respondent

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

Appearance: Rep. by Shri N. Pathak, DR for the appellants.
Rep. by Shri Alok Arora, Advocate for the respondent.

CORAM: **Hon'ble Ms. Jyoti Balasundaram, Vice President**
Hon'ble Mr. Rakesh Kumar, Member (Technical)

FiNAL Order No. 789/2011-EX/Dated:17.08.2011

Per Jyoti Balasundaram:

The assessees herein are engaged in the manufacture of fortified biscuits. During the period November, 2002 to April, 2003, they manufactured fortified biscuits at nil rate of duty under the provisions of Notification No.108/95-CE dated 28.08.95, as amended, which provides that all the goods falling under the Schedule to the Central Excise Tariff Act, 1985, when supplied to the United Nations or an International Organisation and approved by the Government of India are exempted from whole of excise duty and additional excise duty subject to the conditions that before clearance of the said goods the manufacturer produces a certificate from such organisation that the said goods are required for execution of the said project. The benefit of the notification had been availed on the strength of the photocopy of the certificate issued in the name of M/s. Modern Food Industries (I) Ltd. (hereinafter referred to as M/s. MFIL). As the certificate was not issued in the name of the assessees, the department was of the view that the conditions of the notification were not fulfilled and accordingly, issued two show cause notices both dated 19.11.2003 proposing recovery of duty of

Rs.53,03,047/- as result of denial of benefit of the notification was issued. Penal action was also proposed, duty demand was confirmed by the adjudicating authority together with interest and penalty of Rs.30,00,000/- was imposed on the assessees. The lower appellate authority, before whom the adjudication was challenged by the assessees, set aside the demand and penalty holding that the benefit of the notification was admissible to the assessees; hence this appeal by the Revenue.

2. We have heard both the sides and carefully perused the agreement entered into between M/s. Modern Food Industries (I) Ltd. and the asseessees. The agreement clearly brings out that M/s. MFIL, to whom a contract had been awarded by the United Nations World Food Programme for supply of fortified biscuits to Afghanistan, had engaged the respondents to manufacture such biscuits and supplied them to the United Nations World Food Programme. A clear link between M/s. MFIL, in whose name the certificate was issued, and the respondent has thus been established. In this view of the matter, the decisions of the Tribunal in **Hindustan Colas Ltd. Vs. CCE, Vadodara-I reported in 2007 (219) ELT 430 (Tribunal-Ahmd.) and Baroda Ispat Pvt. Ltd. Vs. CCE, Vadodara-I reported in 2009 (236) ELT 622 (Tribunal-Ahmd.)** holding that the certificate issued by the project implementing

authority under Notification No.108/95 is not necessarily required to be in the name of supplier of the products used in the project, are directly applicable to the facts of the present case and following the ratio of the same, we uphold the impugned order extending the benefit of the notification and reject the appeal of the revenue.

(Jyoti Balasundaram)
Vice President

(Rakesh Kumar)
Member (Technical)

Ckp.