TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/327 /2011-328 /2011 - EX[DB] WITH
E/S/390-391/2011-EX

Date **20/09/2011**

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

To :
M/S K.N. BAKERS PVT. LTD.,
VILLAGE-SACHENDI, NEAR RADHA SWAMI
ASHRAM, KALPI ROAD, KANPUR.
209304

M/S K.N. BAKERS PVT. LTD., Appellant

Vs

C.C.E. KANPUR Respondent

STAY ORDER NO. 901 & 902/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.822&823 /2011 EX[DB]** dated 19-9-11 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. SHRI PAWAN HEMRAJANI, DIRECTOR OF M/S K.N. BAKERS PVT. LTD., VILLAGE-SACHENDI, NEAR RADHA SWAMI ASHRAM, KALPI ROAD, KANPUR.

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. III

DATE OF HEARING : 09/09/2011.
DATE OF DECISION : 09/09/2011.

Excise Stay Application No. 390 of 2011 in Appeal No. 327 of 2011

M/s K.N. Bakers Pvt. Ltd. — Appellants

Versus

CCE, Kanpur — Respondent

Excise Stay Application No. 391 of 2011 in Appeal No. 328 of 2011

Mr. Pawan Hemrajani, Director]
M/s K.N. Bakers Pvt. Ltd.] — Appellants

Versus

CCE, Kanpur — Respondent

Appearance

Shri R.K. Monga, Co. Rep. – for the Appellants.

Shri N. Pathak, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

STAY Order No. 901 & 902/2011-EX
FINAL Order No. 822 & 823/2011 Dated : ____________

Per. Archana Wadhwa :-

Both sides agreed that the issue involved in the present appeals, ~~that~~ that is marketability and the consequent exciseability of the sugar syrup, which is intermediate product captively consumed by the appellant in the manufacture of biscuits, stand considered by the Tribunal in the same appellant's case and vide final order No. 673-675/2010-EX dated 23/08/2010, the matter stands remanded.

2. For better appreciation, we reproduced para 12 of the said order of the Tribunal :-

> "12. Plain reading of the orders passed by both the lower authorities apparently, therefore, discloses failure on the part of the authorities to consider the issue of marketability in the manner it was required to be decided as rightly pointed out by the learned advocate for the appellants. The authorities will have to analyse the materials on record and thereafter ascertain whether the same reveal the marketability of the product or not and accordingly decide about the duty liability. Since the authorities below have failed to carry out this exercise before confirming the demand, the orders passed by the lower authority are required to be set aside and the matters need to be remanded to the Adjudicating Authority to decide the same afresh and bearing in mind the law laid down by the Apex Court and various other decisions relied upon on behalf of the appellants and quoted hereinabove. In the result, therefore, the appeals succeed and impugned orders are set aside and the matters are remanded, as stated above."

3. By following the said judgment, we, after allowing the stay petitions, set aside the impugned orders and remand the matter for fresh decision, in the light of observations and directions as

contained in the earlier order. Stay petitions as also appeals are disposed of, in above manner.

(Dictated and pronounced in open court.)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

PK