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

REGISTERED / AD
Email : cestat08@gmail.com

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

Appeal No. E/295 /2011-296 /2011 - EX[DB] Date **23/02/2012**
E/S/352-353/2011-EX

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

To :
M/S BHAGWATI FOODS PVT. LTD.,
PART OF ARAZI NO. 1618, SACHANDI, KANPUR
(U.P.)
M/S BHAGWATI FOODS PVT. LTD., Appellant
Vs
C.C.E. KANPUR **STAY ORDER NO. 314-A** & 315/2012-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/207-208/ 2012 EX[DB]** dated 21-2-12 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.R. KRISHNAN
297-E, POCKET-II, PHASE-I, MAYUR VIHAR DELHI-110091.

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-3
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 SUDHIR KUMAR GUPTA,
C/O M/S BHAGWATI FOODS PVT. LTD.,
PART OF ARAZI NO. 1618, SACHANDI, KANPUR (U.P.)

Assistant Registrar
(Excise Appeal Branch)

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

DIVISION BENCH
Court No.3

E/Stay/352-353/2011 in Appeal No.E/295-96/2011

(Arising out of OIA No.614-615-CE/APPL/KNP/2010 dt.31.12.10 passed by the CCE(A), Kanpur)

Date of Hearing/Decision: 16.02.2012

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, 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?	

M/s.Bhagwati Foods Pvt.Ltd. — Appellant
Shri Sudhir Kumar Gupta

Vs
CCE, Kanpur — Respondent

Present for the Appellant: Shri R.Krishanan, Advocate
Present for the Respondent: Shri S.R.Meena, AR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

STAY ORDER No. 314&315/2012-EX (BR)
FINAL **ORDER NO.** A/207-208/2012-EX (BR)

PER: ARCHANA WADHWA

After dispensing with condition of pre-deposit of duty and penalty, we proceed to decide the appeal itself as the issue is covered by the precedent decisions of the Tribunal.

2. The issue is regarding excisability of sugar syrup which comes into existence in the appellant's factory and is further captively consumed in the manufacture of biscuits. We note in the case of Ambaji Foods (India) Pvt. Ltd. vs. CCE, Kanpur vide final order No.673-675/10-Ex dt.23.08.10 after giving detailed observation the matter was remanded to the original adjudicating authority for determination of marketability, ~~self~~ shelf life and consequent excisability of the products.

3. Learned AR appearing for the Revenue submits and draws our attention to the finding of the lower authorities where detailed manufacturing process stands examined for the product sugar syrup and shelf life of the product. We find that subsequent to the above decision in the case of Ambaji Foods (India) Pvt. Ltd., an identical matter stands examined vide Final Order No.A/44-45/2012-Ex (Br) dt.20.1.12. The submissions made by the DR, were also made by the department and were taken note of in another decision in the case of Homemade Bakers (India) Ltd. It stands observed that there is no dispute about the fact that it is the marketability of the product which is required to be considered and not the actual sale of the product. However, it is the product being manufactured by the appellant, whose marketability is required to be assessed and arrived at by independent evidence. Further the fact that the heading 1702.90 lays down certain criteria in respect of fructose contents for classification of the product and the same is also required to be verified.

4. By following the precedent decision, we hold that the matter is required to be remanded for fresh consideration in the light of the above observations made in the precedent decisions referred supra. Accordingly, after allowing stay unconditionally, we set aside the impugned order and remand the matter to the original adjudicating authority for doing needful in the light of observations made in the precedent decisions, referred supra.

5. The stay petitions as also the appeals get disposed of in the above manners.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

mk