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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/738 /2011-739 /2011,811 /2011 - EX[DB] Date **23/01/2012**
E/S/885-886,982/2011-EX

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

To :
M/S RAMA KRISHNA BAKERS PVT. LTD.,
54-B, CO-OPERATIVE INDL. ESTATE, UDYOG
NAGAR, KANPUR (U.P.)

M/S RAMA KRISHNA BAKERS PVT. LTD., Appellant

Vs

C.C.E. KANPUR STAY ORDER NO. 104-106/2012-EX. Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/33-35/ 2012 EX|DB|** dated 18-1-12
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 SH. J. MAHAJAN, ADV.,
157, THIRD FLOOR,
VINOBHA PURI, LAJPATNAGAR-II,
N. DELHI-24
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 RAJIV TALREJA, DIRECTOR OF, M/S RAMA KRISHNA BAKERS PVT. LTD., 54-B, CO-OPERATIVE INDL. ESTATE, UDYOG NAGAR, KANPUR (U.P.)
15. M/S AMBAJI FOODS (INDIA) PVT. LTD., 1775, VILLAGE-SACHENDI, KANPUR (U.P.)

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Stay Application Nos. 885, 886 & 982 of 2011
Excise Appeal No. 738, 739 & 811 of 2011

[Arising out of Order-in-Appeal No. 616-618/CE/Appl/KNP/2010 dated 6.1.2011 passed by the Commissioner of Central Excise(Appeals), Kanpur]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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? : 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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M/s. Rama Krishna Bakers Pvt. Ltd. — Appellants
Mr. Rajiv Talreja, Director
M/s. Ambaji Foods (India) Pvt. Ltd.

Vs.

Commissioner of Central Excise — Respondent
Kanpur

Appearance:

Shri J. Mahajan, Advocate for the Appellants
Shri B.K. Singh, Jt.CDR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 6.1.2012
STAY ORAL ORDER NO 104-106/2012-EX(BR)
FINAL **ORAL ORDER NO.** A/33-35/2012-EX(BR)

Per Archana Wadhwa (for the Bench):

After dispensing with the condition of pre-deposit of ~~dues~~ demands and penalties in the present appellants, we proceed to decide the appeal itself, with the consent of both the sides inasmuch as we find that the issue stands decided by the precedent decision of the Tribunal.

2. After hearing both the sides, duly represented by Shri J. Mahajan, Advocate for the appellant and Shri B.K. Singh, Jt.CDR for the Revenue, we find that the issue relates to the excisability of sugar syrup, being manufactured by the appellant at the intermediate stage of manufacture of edible biscuits and used by them captively.

3. Learned Jt. CDR Shri B.K.Singh appearing for the Revenue, has advanced arguments to show that the sugar syrup is marketable and hence excisable.

4. On the other hand, it is the appellants contention that sugar syrup manufactured by them is not marketed on account of various factors like short shelf life etc. and hence the same is not excisable.

5. We find that the arguments advanced by the learned Jt.CDR stands dealt with by us in Final Order No. A/18/2012 dated 5.1.2012 in the case of M/s. Ajmer Food Products P. Ltd. The arguments made by learned advocate were also taken note of and after considering the

submissions made by both the sides, the matters were remanded for denovo decision with the direction to establish the marketability of the product and to decide the consequent excisability.

6. In view of the above, we set aside the impugned order and remand the matter to the original adjudicating authority for de novo consideration in the light of the observations made by us in the above referred order No.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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