

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

Appeal No. E/2068/2011 - EX[DB] WITH
E/S/2720/2011-EX

Date 30/01/2012

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

To :
M/S M.B.FOODS PVT.LTD
2A/1-2, SECTOR A, INDUSTRIAL AREA, SANWER
ROAD, INDORE(MP)
M/S M.B.FOODS PVT.LTD

Appellant

Vs
Respondent

C.C.E. INDORE

STAY ORDER NO. 127/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/51 /**
passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**

2012 EX[DB] dated 25-1-12


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult **SH. JATIN MAHAJAN, ADV,**
157, THIRD FLOOR, VINOBHAPURI,
LATPAT NAGAR-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 Publications 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


Assistant Registrar
(Excise Appeal Branch)

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

**Excise Stay Application No. 2720 of 2011
Excise Appeal No. 2068 of 2011**

[Arising out of Order-in-Appeal No. IND/CEX/000/APP/241/11 dated 17.6.2011 passed by the Commissioner of Central Excise(Appeals), Indore]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Sahab Singh, Member (Technical)

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- | | |
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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 |

M/s. M.B. Foods P. Ltd.

Appellants

Vs.

Commissioner of Central Excise
Indore

Respondent

Appearance:

Shri Jatin Mahajan, Advocate for the Appellants
Shri Renu Jagdev, DR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Sahab Singh, Member (Technical)

Date of Hearing/decision : 24.1.2012

STAY ORAL ORDER NO. 127/2012-EX(BR)
FINAL ORAL ORDER NO. A/51/2012-EX(BR)

Per Archana Wadhwa (for the Bench):

After dispensing with the condition of pre-deposit of demand 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 Jatin Mahajan, Advocate for the appellant and Ms. Renu Jagdev, DR 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 Ms. Renu Jagdev, DR 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 ^{identical} arguments advanced by the learned DR 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.

(Pronounced in the open court)

(~~Archan~~ Archan Wadhwa)
Member(Judicial)

(Sahab Singh)
Member(Technical)

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