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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/2564/2010 - EX[DB] , E/S/2304/2010-EX   Date **09/02/2012**

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

To :
M/S ANMOL BAKERS PVT. LTD.
38-A, UDYOG VIHAR, GREATER NOIDA, (U.P.)

M/S ANMOL BAKERS PVT. LTD. Appellant

Vs

C.C.E. NOIDA **STAY ORDER NO. 196/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/122 2012 EX[DB]** dated 06-2-12 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. NOIDA
C-56/42, SECTOR-62, NOIDA-
201307

2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25,LAJPAT NAGAR-III,N.DELHI

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

Assistant Registrar
(Excise Appeal Branch)

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

PRINCIPAL BENCH, COURT NO. III

Stay Application No. 2304 of 2010
Excise Appeal No. 2564 of 2010

[Arising out of Order-In-Appeal No.144/CE/Appl/Noida/2010, dated 27.04.2010 issued by CCE, Noida]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

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. Anmol Bakers P. Ltd. — Appellants
Vs.
Commissioner of Central Excise — Respondent
Noida

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Appearance:
Shri Piyush Kumar, Adv. for the Appellants
Shri R.K.Varma, DR for the Respondent

Date of Hearing/decision : 30.01.2012

STAY ORDER No. 196/2012-EX (BR)
FINAL **ORDER NO . A/122/2012-EX(BR) DATED**

Per Ms. Archana Wadhwa:

After hearing both the sides, we find that the appellants are engaged in manufacture of biscuits. The biscuits are in packaged form ~~in~~ with RSP not exceeding Rs.60/- per kg. was exempted under Notification No.3/07-CE. The said exemption was also extended to biscuits cleared in packaged form with RSP not exceeding Rs.100/- per kg. vide Notification No.22/07.

2. The dispute in the present appeal ~~is~~ relates to clearance of the said biscuits, which stands cleared by claiming the benefit of Notification. In as much as the appellants have used inputs on which they have availed the credit in the manufacture of the said exempted biscuits as also in the manufacture of dutiable biscuits, the demand stands confirmed against them in terms of the provisions of the Rule 6 of Cenvat Credit Rules, @ 10% of the value of the exempted products.

3. Ld. Advocate appearing for the appellants does not dispute that the common Modvatable inputs were used in the manufacture of exempted as well as dutiable products. However, he submits that instead of confirming the demand in terms of Rule 6 at 10% of the value of the final product, the appellants should have been directed by lower authorities to reverse the Modvat credit relatable to inputs used in the manufacture of exempted final products. He specifically draws our attention to the prayer made by him in the memo of appeal before Commissioner(Appeals). The said prayer does not stand considered by him and the appeal stands disposed of by Commissioner(Appeals) only on the point of limitation by recording that the appellants have challenged the order of original adjudicating authority on the point of limitation only.

4. Further, by drawing our attention to the Hon'ble Gujarat High Court's decision in the case of Maize Products reported in 2009(234)ELT431(Guj.) and in the case of Shree Rama Multi Tech Ltd. reported in 2011(267)ELT153(Guj.), he submits that such redetermination of Modvat credit required to be reversed by them, can be directed by the Tribunal. He accordingly makes a prayer to

set aside the impugned order and remand the matter to the original adjudicating authority. After hearing ld. DR, we find that as per declaration of law by Hon'ble Gujarat High Court in the above referred decisions, the assessee can be directed even at the appeal stage to quantify the quantum of Modvat credit required to be reversed by them. Accordingly we set aside the impugned order and remand the matter to Assistant Commissioner for doing the needful in consultation with the appellants who would be given an opportunity to establish their case. We accordingly direct the original adjudicating authority to quantify the credit along with the interest required to be reversed by them. Stay petition as also appeal gets disposed in above terms.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

RK-I