15

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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/4114/2010-4115/2010 - EX[DB] Date **27/03/2012**
E/S/4006-4007/2010

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

To :
M/S KSHMENKARI SUGAR CANDY,

BHINMAL, DISTT. JALORE.

343029

M/S KSHMENKARI SUGAR CANDY, Appellant

Vs

C.C.E. JAIPUR II **Stay order No. 510-511/2012-EX (DB)** Respondent

I am directed to transmit herewith a certified copy of **Final order No.366-367** **2012 EX|DB|** dated 31-3-2012

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. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.JATIN MAHAJAN,ADV
157, THIRD FLOOR, VINOBHA PURI, LAJPAT NAGAR, 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
14. M/S BHARAT SUGAR CANDY WORKS, RIICO INDUSTRIAL AREA, BHINMAL, DISTT. JALORE.

Assistant Registr
(Excise Appeal Br

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 21.03.2012

For approval and signature:

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, 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.	Nl.
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?	No
4	Whether Order is to be circulated to the Departmental authorities?	No

Excise Appeal No. 4114 of 2010 with E/S No. 4006 of 2010

(Arising out of order in Appeal No.330-31(CB)/CE/JPR-II/2010 dated 10.09.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur-II).

M/s Shri Kshemankri Sugar Candy　　　　Appellants

Vs.

CCE, Jaipur　　　　Respondent

AND

Excise Appeal No. 4115 of 2010 with E/S No. 4007 of 2010

(Arising out of order in Appeal No.330-31(CB)/CE/JPR-II/2010 dated 10.09.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur-II).

M/s Bharat Sugar Candy Works　　　　Appellants

Vs.

CCE, Jaipur　　　　Respondent

Coram: **Hon'ble Mr. Justice Ajit Bharihoke, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

STAY ORAL ORDER NO. 510-511/2012-EX(BR)
FINAL ORAL ORDER NO. A/366-367/2012-EX(BR)

Per: Justice Ajit Bharihoke:

Shri Jatin Mahajan, ld. Advocate for the appellant

Sh. Nagesh Pathak, AR present for the department.

With the consent of parties the condition of pre-deposit is waived and appeals are heard.

2. The appellants are engaged in the business of conversion of duty paid sugar into mishri, batasha, makhana and similar items. The process of such conversion involves eating of sugar, removal of the sludge in it and then remoulding it into different shapes and forms. As per the appellants, such conversion process which result into sugar of different form does not amount to manufacture and there is no case of fresh levy on the product. On the contrary, ld. AR submits that the process amounts to manufacture and the converted products are distinct from sugar and have distinct name and character. It is further contended by ld. AR that mishri, batasha etc. are sold in the market for different purposes and no one who is interested in buying batasha as substitute for sugar.

3. As regards classification of such products, the case of the appellant is that such product will fall within 1701.91. On the other hand, according to the revenue the "Bura" should be classified under heading 1701.99 and other products "Mishri and Makhana" are to be classified under heading 1704.90.

4. Show cause notices were issued demanding duty on the premise of manufacture of new commodity and its classification as suggested by the revenue. These show cause notices have been adjudicated by the adjudicating authority confirming duty demand and appropriate interest as also penalty under Section 11AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002. The appellants being aggrieved by the impugned orders have preferred these appeals alongwith stay applications.

5. It is submitted by the appellants that similar appeals of some other parties have already been remanded by the Tribunal for denovo decision considering all the relevant aspects after giving opportunity to the appellants in those cases. Therefore, it would be fair and proper if this matter is also remanded to the adjudicating authority for denovo decision considering all aspects. In this regard, he has referred to the order of other of co-ordinate bench of this Tribunal in Excise Appeal Nos.3458, 3459, 3460, 3461 & 2462 of 2010, wherein while remanding the appeals the Tribunal has observed thus:-

> "Further, we are of the view that no purpose will be served by keeping these appeals pending in Tribunal because these orders are passed without considering the order issued by the CBEC and the claim made by the appellants for cenvat credit duty paid on raw materials has to be examined afresh. Therefore, with the consent of both the sides, we set aside all the five orders and we remit the appeals to the respective original authorities for deciding the matter afresh considering Board's Circular dt. 5.12.2008 and any other legal submissions the appellants may make. We are not passing any order on the merits of the claim made by either side. Accordingly, the impugned orders are set aside and the appeals are allowed by setting aside the impugned order and remanding the matters, keeping all issues open to the respective adjudicating authorities for de-novo decision considering all relevant aspects and after giving opportunity to the appellants to make their submissions in the matter."

6. Ld. AR does not dispute the aforesaid fact and in all fairness he has conceded that department has no objection if the appeals are accepted and the impugned order is set aside by remanding the appeal to the adjudicating authority for denovo decision considering all the relevant aspects and issues raised.

7. Accordingly, the appeals are allowed. Impugned orders are set aside and the matter is remanded to the adjudicating authority for denovo decision keeping in view all the relevant issues and aspects arising in the appeals.

8. The appeals as also the stay applications are accordingly disposed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant