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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

Date 13/03/2012

Appeal No. E/3059/2010,3085/2010-3091/2010 - EX[DB]

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

To :
M/S BHAGWATI FOODS PVT. LTD.,
1495/2, BHATI, PRATAP PUR, KANPUR.

M/S BHAGWATI FOODS PVT. LTD., Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.263-270/ 2012 EX[DB]** dated 09-3-12 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.
1495/2, BHATI, PRATAP PUR, KANPUR

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal Nos. 3059, 3085 to 3091 of 2010

[Arising out of Order-in-Appeal No. 310-317/CE/APPL/KNP/2010 dated 24.6.2010 passed by the Commissioner of Central Excise(Appeals), Kanpur]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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. Bhagwati Foods Pvt. Ltd. — Appellants
Shri Sudhir Kumar Gupta

Vs.

Commissioner of Central Excise — Respondent
Kanpur

Appearance:

Shri R. Krishnan, Advocate for the Appellants
Shri B. Bhushan, DR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing/decision : 27.2.2012

FINAL **ORAL ORDER NO. A/263-270/2012-EX(BR)**

Per Archana Wadhwa (for the Bench):

After hearing both the sides, duly represented by Shri R. Krishnan, Advocate for the appellant and Shri B. Bhushan, 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 Shri B. Bhushan, 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 orders and remand the matters 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)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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