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

Date of hearing/decision: 10.07.2017

Excise Appeal No. 1031 of 2007
(Arising out of order-in Appeal No. 219-CE/APPL/BPL/2006 dt. 19.11.2006 passed by the Commissioner (Appeals), Central Excise, Bhopal, M.P.)

M/s Ramani Bakery Products Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Sh. S. Sunil, Advocate for the appellant
Sh. M. C. Sharma, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 55026 / 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order-in-appeal No. 219-CE/APPL/BPL/2006 dt. 19.11.2006 passed by the Commissioner (Appeals), Central Excise, Bhopal, M.P. The period of dispute is from April 2004 to April, 2005.

2. The appellant is a SSI unit and engaged in the manufacture of various bakery products viz. Bread, pav, cookies etc. . Later, the appellant started making cakes and pastries also. There is no direct sale but it was through four retail outlets in the town. There was another Pvt. Limited company in the name

of M/s Ramani Ice Cream (P) Limited where the partners of the present firm were also Directors in the Ice cream company making with the brand name of "Top'-N-Town". On 02.08.2004 the factory premises of appellant was searched by the officers when it was found that all the goods were despatched in GI containers but at the same time cakes and pastries were cleared to the retail outlets bearing the name of "Top'-N-Town". So, the department was of the view that the appellant has used the brand name of M/s Ramani Ice Cream and therefore, appellant is not entitled for the SSI exemption. Hence, the demand is being made. Being aggrieved, the present appeal has been filed by the appellant.

3. With this background, we have heard Sh. S. Sunil, ld. Advocate appearing for the appellant and Sh. M R. Sharma, ld. AR appearing for the Revenue and perused the record.

4. Ld. Counsel submitted that the demand for duty by denying SSI benefits have been raised for the period 2003-04 to 2005-06. Out of the demand as above, he fairly submitted that the appellant is not challenging the demand for the period June 2003 to March 2004 since during the said period the various products manufactured by the appellant were cleared in containers bearing the brand name "Top'-N-Town". Further, he submitted that the duty demand for this period has already been paid by the appellant alongwith interest. In addition he submitted that the appellant is not challenging the demand pertaining to cookies for the entire period.

Ld. Counsel argued that the balance demand is not sustainable inasmuch as the goods were cleared to the retail outlets in durable and returnable containers which did not bear the brand name.

5. From the record, it appears that the cartons with the brand name "Top'-N-Town" were recovered from two out of four retail outlets who were selling the goods, It was stated that cartons were left over from the earlier period when cakes / pastries were supplied in such cartons and he used it for storing. Their statement is acceptable since no finding was recorded by the department to refute the same. On visit by the officers on 02.08.2004, no cartons were found in other two outlets. When it is so, we accept the plea of the appellant pertaining to the cake and pastries that the same will be entitled for SSI exemption. The remaining order is sustained for demand of duty on cookies. The matter is remanded to the adjudicating Authority for computation of duty pertaining to the cakes and pastries. The remaining order is hereby sustained.

6. In the result, the case is remanded for the limited purpose as above. The impugned order is modified accordingly.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

Justice (Dr.) Satish Chandra)
President

Pant