

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

E-HEARING

Excise Appeal No. 75708 of 2018

(Arising out of Order-in-Appeal No.17/CE/BBSR-GST/2017 Dated 08.12.2017 passed by Commissioner (Appeals), GST, CX & Customs, Bhubaneswar.)

M/s Lingraj Biscuits Pvt. Ltd.

(31, Chandaka Industrial Estate, Patia, Bhubaneswar-751024)

Appellant

VERSUS

Commr. of CGST & Central Excise, BBSR

(Central Revenue Building, Rajaswavihar, Bhubaneswar-7(ODisha))

Respondent

APPEARANCE:

Ms. Rinki Arora, Advocate & Mr. Mayur Jain, Advocate for the Appellant

Mr. A. Mukherjee, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77612/2025

Date of Hearing : 30th October 2025

Date of Decision : 30th October 2025

ORDER [PER R. MURALIDHAR]

The appellant manufactures Biscuits on job work basis for principal manufacturer M/s Parle Biscuits Pvt. Ltd. The Biscuits are exempted from payment of Excise Duty if the MRP is less than 100 Rs. per KG. In the course of manufacturing of biscuits, the appellant for his own captive consumption, manufactures the sugar syrup. This sugar syrup is made as per the specification required for usage in the biscuits of Parle. On the ground that the appellant has undertaken manufacturing activity of sugar syrup and has captively consumed the same in the manufacture of exempted goods, the Show Cause Notice was issued for 41,54,782/- for the period June 2008 to 2010 vide SCN dated 25/03/2013, by invoking the extended period provisions. After due process, the Adjudicating Authority confirmed the demand. On

appeal, the Commissioner (Appeals) has dismissed the appeal. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Counsel submits that the sugar syrup is specifically manufactured keeping in view the quality requirement for manufacturing the Parle biscuits. This is not marketable as normal sugar syrup since the specification is fully customized. Moreover, no preservatives are used while manufacturing the biscuits. Therefore, the manufactured sugar syrup is required to be used within the next few hours. Therefore, she submits that they are not liable to pay the Excise Duty as demanded by the Revenue.

3. She further submits that the issue is no more *res-integra*. She relies on the case laws of (i) **M/S. Lucky Biscuit Company Vs. Commissioner of Central Excise, Patna-2017 (7) TMI 235-CESTAT KOLKATA &** (ii) **M/s. Badami Foods, Vs. Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II-2019(7) TMI 248-CESTAT HYDERABAD,** wherein in respect of identical issue of sugar being used in exempted biscuits manufactured, the Tribunals have held in favour of the appellant.

4. She further submits that the Show Cause Notice issued on 25/03/2013 is clearly time barred since the appellant has been showing that the details of manufacture and clearance of the duty exempted biscuits. No query was raised about the captively consumed sugar syrup. Therefore, she submits that no case of suppression has been made out against the appellant.

5. The Ld. AR reiterates the findings of the lower authorities.

6. Heard both sides and perused the appeal papers and the documents placed before us.

7. Admittedly, the sugar syrup manufactured by the appellant has been consumed by them captively within the factory premises. No evidence has been brought in by the Revenue that the goods are

marketable or they are being marketed. Since, the sugar syrup manufactured by the appellant is specific to their own requirement, the same could not be equated with any other sugar syrup which is generally available in the market wherein preservatives are used for longer shelf-life.

8. We also find that the issue is not more *res integra*. The Kolkata Tribunal in the case of **M/s. Lucky Biscuit Company Vs. Commissioner of Central Excise, Patna-2017 (7) TMI 235-CESTAT Kolkata**, has held as under:-

*2. Ld. Advocate for the appellants submits that sugar syrup as per the specification and requirements of Parle branded biscuits has no self life and is not marketable. Hence, the appellant stopped paying duty on the sugar syrup. The contention of the appellant is that the sugar syrup is not ordinarily sold in the market. He relied upon the Tribunal's order in the case of another job worker of M/s. Parle in support of his contention. In the case of **Rishi Beckery Vs. CCE Kerala [2015(328)ELT 634 (Tri-Del.)]**, it was also contended that marketability of sugar syrup which is captively used for the manufacture of biscuits was not proved by the department. He also argued that the sugar syrup in dispute is not classifiable under 17029090 as fructose content was less than 50% in the test conducted by Sri Ram Institute for Industrial Research. He further argued that the appellants have not taken credit on input used for sugar syrup. Further, exemption would be available under Notification No.67/95-CE dated 16.03.1995 in view of Clause-6 to proviso thereof. He also contested that the penalty claiming that relevant sub-rule of Rule 25 has not been mentioned and there was no suppression of facts to evade duty.*

5. We find that the issue in the present case is whether sugar syrup made by the appellant for captive use in the manufacture of exempted biscuit is chargeable to central excise duty under sub-heading 17029090. We find that both the lower authorities have concluded that the sugar content is more than 80% on empirical basis without any chemical test having been done. In the absence of chemical test to ascertain the precise fructose content of the goods, any conclusion that the goods are classifiable under sub-heading 17029090 is not sustainable. We also find that the CBEC Circular dated 7.11.1954 relied upon by the lower authorities has been issued in respect of sugar syrup produced in the manufacture of aerated water and ayurvedic medicines. Hence, the same cannot be applied to the sugar syrup being produced for the biscuits without establishing that the two products are identical. We also find that issue in this appeal is squarely covered by the

judgment of the Tribunal in the case of **Rishi Bakers Pvt. Ltd. (supra)**, wherein the Tribunal has held as under:

8. "Next comes the question of classification. The Department has classified the product, in question, under sub-heading 1702 90 90. Sub-heading 1702 90 90 comes under the 6 digit sub-heading 1702 90 which covers other sugars including invert sugar and "sugar syrup blends containing in the dry stage 50% by weight of fructose". The goods, in question, are sought to be classified under 1702 90 90 as "sugar syrup blends containing in the dry stage, 50% by weight of fructose". In our view for classification as sugar syrup blend in this sub-heading the product must contain 50% by weight of fructose sugar in dry state. In these cases, the appellant's plea from the very beginning has been that the fructose sugar content is less than 50% and in this regard they have produced the test report of Shriram Institute of Industrial Research. It is seen that the Commissioner (Appeals) has not given any finding on this plea. Not only this, there is no evidence to show that before seeking classification of the goods, in question, under sub-heading 1702 90 90, the samples drawn from the goods had been got tested by the CRCL to confirm as to whether the fructose content of the goods, in question, in dry stage is 50% by weight. Just because the appellant during period till June 2008 were paying duty on the goods by classifying the same under sub-heading 1702 90 90, it cannot be presumed that they had accepted that the goods, in question, conform to the description of sugar syrup blends of sub-heading 1702 90 for which the sugar syrup in dry stage must contain 50% by weight of fructose. The Apex Court in the case of **Metlex (I) Pvt. Ltd. v. CCE, New Delhi reported in 2004 (165) ELT. 129 (S.C.)** has held that filing of classification list mistakenly does not mean that party has to pay duty, if in law, he is not bound to pay duty. Same view has been taken by the Apex Court in its judgment in the case of **Bonanzo Engg. & Chemical P. Ltd. v. CCE reported in 2012 (277) E.L.T. 145 (S.C.)**. In view of this, we hold that the classification of the goods under sub-heading 1702 90 90 is not sustainable, as absolutely evidence has been produced by the Department to show that the fructose content of the goods, in question, in dry state was 50%.

9. Even if it is assumed that the goods, in question, are covered by sub-heading 1702 90 90 for attracting Central Excise duty the goods must be proved to be marketable. The Tribunal had remanded this matter to Commissioner (Appeals) for examining the question of marketability of the goods, in question. In this regard it is settled law that the marketability of a product has to be established in the condition in which it emerges. In this

regard the Apex Court in the case of **Bata India Ltd. v. CCE, New Delhi (supra)** has held that the test of marketability is whether product is marketable in condition in which it emerges. In this regard the marketability of the goods produced by a particular manufacturer cannot be presumed on the basis of the marketability of the similar goods in different condition being produced by another manufacturer, unless it shown that the two products are identical. In these cases, the Commissioner (Appeals) has held that the goods, in question, to be marketable only on the basis that the invert sugar syrup being manufactured by M/s. Dhampur Speciality Sugars Ltd. is being sold to M/s Britannia Industries, M/s J.B. Mangaram Food Industries and M/s. ITC Ltd. In our view this basis of holding that the goods, in question, are marketable is absolutely wrong, as it has been presumed that the sugar syrup being made by the appellants is identical to the invert sugar syrup being made by M/s. Dhampur Speciality Sugars Ltd. for which there is no basis. Chemically, invert sugar is obtained by Hydrolysis of cane sugar (sucrose, a disaccharide with specific rotation of + 66.50) and the same is a mixture of glucose (with specific rotation of +52.70) and fructose (with specific rotation of -92.0), with net specific rotation of 19.70. The process of hydrolysis of cane sugar (which is dextrorotatory i.e. with rotation of + 66.50) is also called inversion, as the mixture of glucose and fructose formed by this process is levorotatory with sp. Rotation of -19.70 and for this reason the mixture of glucose and fructose formed by hydrolysis of cane sugar is called invert sugar. The invert sugar has longer shelf life. Whether a sugar syrup is ordinary cane sugar syrup or is invert sugar syrup has to be ascertained by chemical test which has not been done. It is, therefore, totally wrong to presume a given sugar syrup as invert sugar syrup without test. The judgments of the Apex Court in the cases of **Gujarat Narmada Valley Fert. Co. Ltd. v. CCE & Cus. (supra)**, **Nicholaas Piramal India Ltd. v. CCE, Mumbai (supra)** and **Medley Pharmaceuticals Ltd. v. CCE & Cus, Daman (supra)** cited by the learned DR are not applicable to the facts of this case.

10. In view of the above discussion, we hold that neither there is any evidence to prove that the goods, in question, are classifiable under 1702 90 90 nor there is any evidence to prove that the goods, in question, in form in which they come into existence in the appellant's factories, are marketable. We, therefore, hold that the impugned order is not sustainable. The same is set aside. The appeals are allowed with consequential relief."

6. The above ratio of judgment is directly applicable to the facts of the present case. The above decision of the Tribunal has been followed in the case of

Bhagwati Foods Pvt Ltd & Orthers Vs. CCE & ST, Kanpur in Final Order No. A/70409-70417/2016-EX[DB] dated 30.06.2016 in Appeal Nos. E/51610-51618/2015-EX[DB].

7. *In view of the foregoing, we find that the order of the Commissioner (Appeals) is not sustainable and the same is set aside. The appeal filed by the appellant is allowed.*

9. The Hyderabad Tribunal in the case of **M/s. Badami Foods, Vs. Commr. of Customs, Central Excise & Service Tax, Hyderabad-II-2019 (7) TMI 248-CESTAT Hyderabad**, has held as under:-

7. The demand of duty is on the sugar syrup which is manufactured and captively consumed by the appellants. It is the case of the department that the sugar syrup is marketable product and merits classification under 1702 9090 of CETA, 1985. However, on going through the said Chapter heading the sugar syrup ought to contain at least 50% by way of fructose. In the present case, though the department alleges that sugar syrup is classifiable under 1702 9090 there is no evidence adduced by the department as to what is the fructose content in the said syrup. In Rishi Bakers Pvt Ltd (supra) on similar set of facts the contention of the department that sugar syrup falls under heading 1702 9090 and that the said item is marketable was not accepted by the Tribunal. In the said decision, the Tribunal held that marketability of the product has been perceived by the department on the basis of marketability of invert sugar syrup. Since the department has not conducted any chemical test to arrive at the percentage of fructose content in the syrup, the contention that it merits classification under heading 1702 9090 or that it is marketable product cannot be accepted. The relevant portion of the decision is reproduced as under.

“8. Next comes the question of classification. The Department has classified the product, in question, under sub-heading 1702 90 90. Sub-heading 1702 90 90 comes under the 6 digit sub-heading 1702 90 which covers “other sugars including invert sugar and sugar syrup blends containing in the dry stage 50% by weight of fructose”. The goods, in question, are sought to be classified under 1702 90 90 as “sugar syrup blends containing in dry stage, 50% by weight of fructose”. In our view for classification as “sugar syrup blend” in this sub-heading the product must contain 50% by weight of fructose sugar in dry state. In these cases, the appellant’s plea from the very beginning has been that the fructose sugar content is less than 50% and in this regard they have produced the test report of Shriram Institute of Industrial Research. It is seen that the Commissioner (Appeals) has not given any finding on this plea. Not only this, there is no evidence to show that before seeking classification

of the goods, in question, under sub-heading 1702 90 90, the samples drawn from the goods had been got tested by the CRCL to confirm as to whether the fructose content of the goods, in question, in dry stage is 50% by weight. Just because the appellant during period till June 2008 were paying duty on the goods by classifying the same under sub-heading 1702 90 90, it cannot be presumed that they had accepted that the goods, in question, conform to the description of sugar syrup blends of sub-heading 1702 90 for which the sugar syrup in dry stage must contain 50% by weight of fructose. The Apex Court in the case of *Metlex (I) Pvt. Ltd. v. CCE, New Delhi* reported in 2004 (165) E.L.T. 129 (S.C.) has held that filing of classification list mistakenly does not mean that party has to pay duty, if in law, he is not bound to pay duty. Same view has been taken by the Apex Court in its judgment in the case of *Bonanzo Engg. & Chemical P. Ltd. v. CCE* reported in 2012 (277) E.L.T. 145 (S.C.). In view of this, we hold that the classification of the goods under sub-heading 1702 90 90 is not sustainable, as absolutely no evidence has been produced by the Department to show that the fructose content of the goods, in question, in dry state was 50%.

9. Even if it is assumed that the goods, in question, are covered by sub-heading 1702 90 90, for attracting Central Excise duty the goods must be proved to be marketable. The Tribunal had remanded this matter to Commissioner (Appeals) for examining the question of marketability of the goods, in question. In this regard it is settled law that the marketability of a product has to be established in the condition in which it emerges. In this regard the Apex Court in the case of Bata India Ltd. v. CCE, New Delhi (supra) has held that the test of marketability is whether product is marketable in condition in which it emerges. In this regard the marketability of the goods produced by a particular manufacturer cannot be presumed on the basis of the marketability of the similar goods in different condition being produced by another manufacturer, unless it shown that the two products are identical. In these cases, the Commissioner (Appeals) has held that the goods, in question, to be marketable only on the basis that the “invert sugar syrup” being manufactured by M/s. Dhampur Speciality Sugars Ltd. is being sold to M/s. Britannia Industries, M/s. J.B. Mangaram Food Industries and M/s. ITC Ltd. In our view this basis of holding that the goods, in question, are marketable is absolutely wrong, as it has been presumed that the sugar syrup being made by the appellants is identical to the “invert sugar syrup” being made by M/s. Dhampur Speciality Sugars Ltd. for which there is no basis. Chemically, invert sugar is obtained by Hydrolysis of cane sugar (sucrose, a disaccharide with specific rotation of + 66.5°) and the same is a mixture of glucose (with specific rotation of +52.7°) and fructose (with specific rotation of - 92°), with net specific rotation of - 19.7°. The process of hydrolysis of cane sugar (which is dextrorotatory i.e. with rotation of + 66.5°) is also called inversion, as the mixture of glucose and fructose formed by this process is levorotatory with sp. Rotation of -

19.7° and for this reason the mixture of glucose and fructose formed by hydrolysis of cane sugar is called invert sugar. The invert sugar has longer shelf life. Whether a sugar syrup is ordinary cane sugar syrup or is invert sugar syrup has to be ascertained by chemical test which has not been done. It is, therefore, totally wrong to presume a given sugar syrup as invert sugar syrup without test. The judgments of the Apex Court in the cases of Gujarat Narmada Valley Fert. Co. Ltd. v. CCE & Cus. (supra), Nicholaas Piramal India Ltd. v. CCE, Mumbai (supra) and Medley Pharmaceuticals Ltd. v. CCE & Cus, Daman (supra) cited by the learned DR are not applicable to the facts of this case.”

8. In the present case, the department having not conducted any tests to prove the fructose content of the sugar syrup, the above decision would apply to hold that the sugar syrup manufactured by appellants is not a marketable commodity.

9. Further, the issue as to the eligibility of notification 67/1995 as well as demand of excise duty on the sugar syrup was analyzed by the Tribunal in the case of Lucky Biscuits Company (supra). The demand was set aside observing that department has failed to adduce evidence as to the marketability of sugar syrup manufactured as intermediary product. Similar decision was taken in Parle Biscuits Pvt Ltd (supra). It is the burden of the department to establish the marketability as well as the excisability of a product while demanding duty. In the present case, the department has miserably failed to establish marketability or the classification of the said sugar syrup. In the decision cited above, the Tribunals have analyzed very same point and held that demand of duty on intermediary product viz., sugar syrup cannot sustain. Following said decisions, we are of the view that the demand has no legal or factual basis and is required to be set aside which we hereby do.

10. Even in the present case, we do not find any documentary evidence to the effect that any test was conducted towards marketability of the manufactured sugar syrup. Therefore, we hold that the ratio laid down in the above case law is squarely applicable. Accordingly, we set aside the impugned order and allow the appeal on merits.

11. We also find force in the appellant’s argument that the Revenue has not made out any case of suppression with proper documentary evidence. It is on record that the appellant is manufacturing biscuits which are exempted for which they have been filing their monthly Returns. Therefore, the Department would know that the sugar syrup

which is a dutiable item is being manufactured by them. Further, the cited case laws show that the issue is that of interpretation about the excisability of the sugar syrup. Therefore, we hold that no case of suppression has been made out. Accordingly, we set aside the impugned order on account of time bar also.

12. Thus, the appeal stands allowed both on merits as well as on account of limitation. The appellant would be eligible for consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open court.)

Sd/-
(K. Anpazhakan)
Member (Technical)

Sd/-
(R. Muralidhar)
Member (Judicial)

Pooja