

**IN THE CUSTOMS, EXCISE AND SERVICE TAX  
APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT MUMBAI**

**APPEAL NO: E/1723/2010**

[Arising out of Order-in-Appeal No: PII/AV/101/2010 dated 13<sup>th</sup> July 2010 passed by the Commissioner of Central Excise (Appeals-II), Pune.]

*For approval and signature:*

**Hon'ble Shri C J Mathew, Member (Technical)  
Hon'ble Shri Ajay Sharma, Member (Judicial)**

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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?     | : | Yes  |
| 2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | Yes  |
| 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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Venugopal Foods Pvt Ltd

... *Appellant*

*versus*

Commissioner of Central Excise  
Pune – II

... *Respondent*

*Appearance:*

Ms Padmavati Patil, Advocate for appellant

Shri DS Chauhan, Superintendent (AR) for respondent

**CORAM:**

**Hon'ble Shri C J Mathew, Member (Technical)**  
**Hon'ble Shri Ajay Sharma, Member (Judicial)**

**Date of hearing: 29/08/2018**  
**Date of decision: 20/12/2018**

**ORDER NO: A/88160 / 2018**

*Per: C J Mathew*

The issue in this appeal of M/s Venugopal Foods Pvt Ltd against order-in-appeal no. PII/AV/101/2010 dated 13<sup>th</sup> July 2010 of Commissioner of Central Excise (Appeals-II), Pune pertains to confirmation of duty liability of ₹ 11,23,083 for the period from July 2008 to February 2009 under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AB of Central Excise Act, 1944, by the original authority who had dropped proceedings for imposition of penalty under rule 25 and rule 26 of Central Excise Rules, 2002 and also accorded the benefit of availment of CENVAT credit of duty paid on inputs.

2. The appellant is a contract manufacturer of 'biscuits' for M/s Parle Products Pvt Ltd which are exempt from duty of central excise as per notification no. 3/2006-CE dated 1<sup>st</sup> March 2006 as amended by

notification no. 22/2007-CE dated 3<sup>rd</sup> May 2007. An essential ingredient for production of 'biscuits' is the sweetener which is derived by dissolving 'sugar' in sufficient quantity of water by subjecting to heat and thereafter adding 'citric acid' which the jurisdictional central excise authorities considered to be liable to duties applicable on 'intermediate goods' used for production of final goods that are exempt from duty. Furthermore, the appellant had been discharging the duty liability till June 2008 but stopped thence on the ground that the captively consumed 'sugar syrup' is not a marketable commodity and hence not liable to duty.

3. It is contended on behalf of the appellant that the goods do not conform to the description in heading no. 17029090 of First Schedule to the Central Excise Tariff Act, 1985 and that, for want of shelf-life, the definition of 'excisable goods' in section 2 (d) of Central Excise Act, 1944, viz.

*“Goods” includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.’*

as incorporated with effect from 10<sup>th</sup> May 2008, and relied upon in the show cause notice, could not be invoked. Learned Counsel for appellant drew our attention to the decisions of the Tribunal in *Rishi Bakers Pvt Ltd v. Commissioner of Central Excise & Service Tax, Kanpur [2016 (328) ELT 634 (Tri-Del)]* and in *MB Bakers Pvt Ltd &*

*others v. Commissioner of Central Excise, Indore [2017-TIOL-249-CESTAT-DEL]* to contend that the former laid down the circumstances in which duty liability could arise for such products and that, relying upon this decision, an identically situated manufacturer had been granted relief from leviability to duty. Further contending that the first appellate authority had, erroneously and by placing reliance on circular no. 780/13/2004-CX dated 12<sup>th</sup> March 2004 of Central Board of Excise & Customs, disregarded their submission that the threshold of 'fructose' content specified in heading no. 170290 had not been fulfilled to warrant classification therein despite test report indicating the content.

4. Learned Authorised Representative cited the findings of the lower authorities that 'sugar syrup' is a marketable commodity and that the addition of 'citric acid' ensures adequate shelf-life to warrant the finding. Relying upon the decision of the Tribunal in *The Maharashtra Agro Industries Development Corp Ltd v. Commissioner of Central Excise, Nagpur [2017-TIOL-257-CESTAT-MUM]* which followed various other judgements of the Tribunal such as *PepsiCo India Holdings Ltd v. Commissioner of Central Excise, Chennai [2009 (245) ELT 707 (Tri-Chennai)]*, upheld by the Hon'ble High Court of Madras, and *Commissioner of Central Excise, Hyderabad v. Spectra Bottling Co Ltd [2006 (198) ELT 417 (Tri-Bang)]* to arrive at the conclusion that concentration of sugar in the syrup of more than

65% and the presence of citric acid would render the goods marketable and, hence, liable to duty of central excise.

5. There can be no doubt that, unless otherwise established, the deemed marketability of 'sugar syrup' is beyond question. It is also admitted that the appellant had been discharging duty liability on 'sugar syrup' as 'intermediate goods' till July 2008 and had discontinued payment of duty on advice from their client, M/s Parle Products Pvt Ltd. For the sweetening of 'biscuits', the addition of 'sugar syrup' is a necessity and is, invariably, produced within the factory by dissolving 'table sugar' in water using heat. This process, known as hydrolysis, converts 'table sugar' into 'invert sugar' and transforms the 'sucrose' in the former into 'fructose' and 'glucose' of equal proportion. Though this hydrolysis can be achieved by application of heat, the addition of 'citric acid' speeds up the process of conversion. 'Invert sugar' has shelf-life, is marketable and is an excisable good. The contention of the appellant that 'sugar syrup' produced by them does not meet these requirements, owing to less than adequate 'fructose' content, is backed by a test report which is not controverted by the lower authorities.

6. The lower authorities have discounted the relevance of 'fructose' content by a semantic analysis of the description in heading no. 170290 of First Schedule to Central Excise Tariff Act, 1985

without any attempt to comprehend the role of 'sugar syrup' in the manufacture of biscuits and the process by, and purpose for, which 'sugar syrup' is produced. Consequently, the property of stability that is acquired by 'invert sugar' in contradistinction with 'sugar syrup' – which is a generic description of sugar dissolved in water – has not been taken into consideration while rendering the findings. The finding of 'sugar syrup' having shelf-life and, thereby, becoming excisable is not founded on a proper appreciation of the impugned product.

7. The relatively less stable 'sugar syrup' utilised in the manufacture of 'biscuits' has been recognised and acknowledged in the decisions of the Tribunal in *re Rishi Bakers and in re MB Bakers Ltd*. The decision in *re The Maharashtra Agro Industries Development Corp Ltd* does not stand on the same footing as the 'sugar syrup' used in the manufacture of 'juices and concentrates' are for purposes which are not comparable with the addition of adding 'sugar syrup' to 'biscuits' which is an entirely different food product.

8. In view of the decisions of the Tribunal dealing with an identical situation pertaining to another contract manufacturer of 'biscuits', and in the absence of any test report to contradict the 'fructose' content in the 'sugar syrup' produced by the appellant, we do not find sufficient reasons to consider the impugned goods to be

excisable within the meaning of section 2(d) of Central Excise Act, 1944.

9. Accordingly, we set aside the impugned order and allow the appeal.

*(Pronounced in Court on 20/12/2018)*

**(Ajay Sharma)**  
***Member (Judicial)***

**(C J Mathew)**  
***Member (Technical)***

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