CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1806 of 2012

(Arising out of Order-in-Appeal No. PII/MMD/205/2012/1441 dated 10.09.2012 passed by the Commissioner of Central Excise (Appeals) Pune)

M/s Venugopal Foods Pvt. Ltd. .... **Appellant**
Plot No.J-8, Additional MIDC, Satara-415004.

Versus

Commissioner of Central Excise, Pune-II .... **Respondent**
B Wing, 4th Floor, ICE House, Sasoon Road, Pune-411001.

Appearance:

Shri Viraj Reshamwala, Advocate for the Appellant

Shri Sunil Kumar Katiyar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85716/2023

Date of Hearing: 02.03.2023
Date of Decision: 02.03.2023

Per: Dr. Suvendu Kumar Pati

Confirmation of duty demand on "Sugar Syrup" captively consumed during the manufacture process in its entirety along with imposition of penalty by the Adjudicating Authority that got confirmed by the Commissioner (Appeals) vide his above referred Order-in-Appeal, is assailed in this appeal.

2. Fact of the case, in a nut shell, is that appellant is a manufacturer of biscuits on job work basis for the principal manufacturer M/s Parle Products Pvt. Ltd. For manufacturing

biscuits, sugar syrup is prepared within the factory by adding sugar and water with the help of citric acid and subjecting the same to heating process. Sugar syrup is used in semi hot condition for manufacturing purpose. Biscuits manufactured by the appellant were being cleared on payment of duty up to 01.03.2007, after which exemption Notification No. 3/2006-CE was brought exempting central excise duty on packed biscuits with sale price not exceeding Rs.100/- per kg. Earlier sugar syrup was exempted from payment of duty under Notification No. 67/95-CE. But after this Notification No. 3/2006-CE come into operation, Department proposed to demand duty on sugar syrup captively consumed by the appellant and accordingly, for the period from November 2010 to February 2011, show cause notice with duty demand of Rs.4,35,704/- on captively consumed sugar syrup was served on the appellant on the ground that sugar syrup is classifiable under sub-heading 1702.90 and the same is consumed for manufacture of dutiable biscuit that was conditionally exempted from payment of duty. Appellant contested the same and suffered adjudication process that confirmed the demand, interest and penalty. Appellant’s unsuccessful attempt before the Commissioner (Appeals) has brought the dispute to this forum.

3. We have heard submissions from both sides and perused the case records.

4. Learned Counsel for the appellant Mr. Viraj Reshamwala submitted that sugar syrup meeting the specific requirement of Parle branded biscuit was neither marketable nor having self life

to make it marketable. He further submitted that regarding non saleable condition of the sugar syrup in the market, as it is not originally sold in the market, appellant also had produced a certificate from testing agency and dealer's statements on sugar products, but discarding everything, the duty demand was confirmed by the Commissioner (Appeals). He further placed reliance on the Tribunal's decision passed in the appellant's own case for the earlier period as reported in *2022-TIOL-395-CESTAT-MUM; 2019-TIOL-11-CESTAT-MUM and 2022-TIOL-395-CESTAT-MUM,* that gave the findings that type of sugar syrup prepared by the appellant is not marketable, hence the same cannot be made dutiable. Further reliance is placed by him on the judgment of the Tribunal passed in the case of *Rishi Bakers – 2015 (328) ELT 634 (T); M. B. Bakers – 2017-TIOL-249-CESTAT-DEL; Parle Biscuits – 2017-TIOL-4475-CESTAT-DEL; Gokul Foods – 2018 – TIOL–169-CESTAT-ALL; Lucky Biscuit – 2017- TIOL-3841–CESTAT-KOL,* in which it was consistently held that sugar syrup is not dutiable. Learned Authorized Representative reiterated the findings of the learned Commissioner (Appeals) and supported the reasoning available therein.

5. In view of series of decisions on the issue, in which consistent finding is available that sugar syrup is not a marketable product and therefore is not dutiable, we are of the considered view that the order passed by the Commissioner (Appeals) is not sustainable in law on facts. It is, noteworthy, to mention here that this Bench comprising of the present Members have passed order recently allowing the appeal of the present

appellant for its earlier period from July 2010 to October 2010 in which we have analyzed the reasoning of our order in detail. In carrying forward the judicial precedent so as to maintain consistency and predictability in the orders to be passed by this Tribunal, the following order is passed.

ORDER

The appeal is allowed and impugned Order-in-Appeal No. PII/MMD/205/2012/1441 dated 10.09.2012 passed by the Commissioner (Appeals) is set aside with consequential relief, if any.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Saniv Srivastava)
Member (Technical)

Sinha