IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No. 42609/2017

(Arising out of Order in Appeal No. 118/2017 (CTA-I) dated 6.9.2017 passed by the Commissioner of GST & Central Excise (Appeals – I), Chennai)

Modern Bakers (Madras) Pvt. Ltd. **Appellant**
347, MRH Road, Ommakulamedu
Madhavaram, Chennai – 600 060.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai – 600 035.

APPEARANCE:

Shri Mayur Jain, Advocate for the Appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41033/2025

Date of Hearing: 12.09.2025
Date of Decision: 23.09.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 118/2017 (CTA-I) dated 6.9.2017 passed by the Commissioner of GST & Central Excise (Appeals – I), Chennai (impugned order).

2. Brief facts of the case are that the appellant is a manufacturer of biscuits on job work basis during which 'sugar invert syrup' (also referred to as '**sugar syrup**'), is manufactured and captively consumed. The goods fall under Chapter Heading 19 and 17 of Central Excise Tariff Act 1985 (**CETA**), respectively. Biscuits are exempted from payment of central excise duty in terms of Notification No.

3/2007-CE dated 01.03.2007 hence it was felt by the department that sugar syrup consumed captively is liable to discharge central excise duty. Accordingly, a Show Cause Notice (**SCN**), was issued to the appellant and after due process an Order-in-Original (**OIO**), was passed demanding a duty of Rs.4,97,455/- along with interest for the period from December 2009 to February 2010. A penalty was also imposed under Rule 27 of the Central Excise Rules, 2002. The appellant preferred an appeal against the order before the Ld. Commissioner (Appeals) and the same came to be rejected. Hence the present appeal.

3. The learned Advocate Shri Mayur Jain appeared for the appellant and Ld. Authorized Representative Shri M. Selvakumar appeared for the respondent.

3.1 The Ld. Counsel Shri Mayur Jain submitted that 'sugar invert syrup' manufactured during the course of job work was not marketable. The mere payment of duty till May 2008 would not make the goods dutiable. For exigibility of the product whether intermediate or final, marketability must be established independently by the department. No test has been conducted by the department to establish that the intermediate product sugar syrup has a shelf life or is marketable. The department neither in the SCN nor in the OIO has provided any evidence stating the same. The mere fact of a product having some shelf life by itself does not prove marketability, as held by the Hon'ble Supreme Court in the case of **F.G.P. Ltd Vs UOI** [2004 168 ELT 289 SC]. It is a settle legal position that's the burden to prove marketability lies with revenue. The said issue is no longer res integra and has been decided by this Tribunal in the appellants own case.

[**Modern Bakers, (Madras) P. Ltd. Vs Commissioner of Central Excise, Chennai** - Final Order No's. 41553-41558-2019 dated 18.11.2019], where in the Tribunal has found that the department has failed to prove that sugar syrup is marketable and therefore cannot be subjected to levy of duty. The learned council stated that the appellant has reversed the credit related to inputs used for manufacturing sugar syrup, because biscuits were exempt from duty, thus complying with rule 6 of the Cenvat Credit Rules 2004. He hence prayed that the appeal may be allowed and the impugned order set aside.

3.2 We find that while a large number of judgments (more than 40), have been cited in the written submissions on various legal issues, but only copies of seven judgments were submitted along with the written submissions on 12.09.2025 and that too pertaining to the single issue of exigibility of sugar syrup only. Firstly citing a large number of judgments on the main issue when the same is covered by the appellants own case for the earlier period was not necessary. A couple of other leading judgments would do. Secondly an equal worrisome issue is the non-submission of relied upon judgments, which is not appreciated. If the Ld. Counsel found it difficult to collect and submit the judgments relied upon by him, he would agree that it would be equally time consuming if not more, for the Bench to search, read all the judgments and examine the applicability of its ratio to the issue raised in the appeal. What is required is to rely on a few leading judgments on an issue and supply copies of the same to the Bench hearing the matter. The Hon'ble Supreme Court in **Rashmi Metaliks Ltd. Vs Kolkata Metropolitan Development Authority,** [(2013) 10 SCC 95], expressing its anguish on a similar matter held that:

> "6. . . The sheer plethora of precedents makes it essential that this Court should abjure from discussing each and every decision which has dealt with a similar question of law. Failure to follow this discipline and regimen inexorably leads to prolixity in judgments which invariably is a consequence of lengthy arguments.
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> 7. It is a capital exhaustion of Court time, lack of which has become critical. . ."
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> (emphasis added)

The Hon'ble Supreme Court of India earlier in **Kanwar Natwar Singh Vs Directorate Of Enforcement & Anr** [2010 (13) SCC 255 / AIR 2010 SC (SUPP) 9 / (2010) 10 SCALE 401], had held:

> "38.Before parting with the judgment, we are constrained to observe with some reluctance about the recent practice and procedure of including list of authorities in the compilation without the leave of the Court. In many a case, even the senior counsel may not be aware of inclusion of such authorities in the compilation. In our considered opinion, this Court is not required to consider such decisions which are included in the compilation which were not cited at the Bar. In the present case, number of judgments are included in the compilation which were not cited at the Bar by any of the counsel. We have not dealt with them as we are not required to do so."
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> (emphasis added)

A Coordinate Bench of this Tribunal too had examined a similar issue in the case of **M/s. Shree Vijayalakshmi Charitable Trust Vs Commissioner of GST and Central Excise, Coimbatore**. [FINAL ORDER Nos. 40481-40482/2025, Dated: 25.04.2025], where the Bench speaking through one of us [Shri Ajayan T.V., Member (Judicial)], at para 43 held:

> "43. Before parting with the order, we are constrained to observe that of late, we have been saddled, mercifully less often than not, with disparate written submissions running into 40-50 odd pages or more, with as many annexures of documents, circulars and case laws, and at times marked as Annexure A to ZZZ and then some more from a to s, or till the end of the alphabet string. It is appalling that such practice continues despite having been deprecated more than a decade ago by the Honourable Apex Court in its Judgement dated 11.09.2013 in Rashmi Metaliks v Kolkata Metropolitan Dev. Authority, 2013 INSC 606: (2013) 17 S.C.R. 345, para 6,7 & 9 refers. Such verbose pleadings end up being more of a hinderance than assistance, creating more confusion and obscuring the facts than aiding the cause. It inexorably consumes tremendous amount of time as we necessarily delve into each judgement to discern whether it is applicable or not. Nevertheless, when judgements are

> indiscriminately piled on in the submissions, we deem it wholly unnecessary to detail here why each one is inapplicable, merely because it has been placed in the compilation submitted. Rather than a judgement that contains the apt ratiocination, ten are placed before us, and the sheer plethora of citations makes it inevitable that the order abjures from discussing every such decision, else the consequence will be inordinately lengthy orders."
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> (emphasis added)

We find that in this case not only were the judgments not cited at the Bar but copies of the same were also not enclosed with the written submissions. Hence we do not deem it necessary to examine and discuss these decisions.

3.3 The Ld. A.R. has reiterated the points mentioned in the findings of the impugned order. He stated that sugar syrup is specifically mentioned in the CETA and the appellant was paying duty on the said goods till May 2008 and was also taking input credit for discharging duty on the same. Hence the demand was correctly confirmed and the appeal may be rejected.

4. We have heard both the parties to the appeal and have carefully gone through the appeal. We find that the issue involved is the exigibility of sugar syrup that emerges during the manufacture of biscuits. That sugar syrup is mentioned in the CETA is not disputed. However, the issue is whether the goods are marketable so as to make them exigible to Central Excise duty.

5. The Ld. Original Authority's finding was rooted to the fact that the appellant was earlier paying duty on the impugned goods and hence the goods must be marketable. This logic does not find favour with us. An assessee pays duty on the manufacture of a product as per his knowledge of law. He is not expected to be an expert on classification matters and whenever he discovers that the goods are not exigible to duty he can legitimately change his stand, so long as no

fraud is involved. In **Nirmala L. Mehta Vs A. Balasubramaniam** [CIT (2004) 269 ITR 1 (Bom)], the Hon'ble Bombay High Court emphasized that no 'estoppel' can arise against the statute. Acquiescence cannot deprive a party of rightful relief when taxes are levied or collected without legal authority. However, in such a situation it would always be prudent for the assessee to also inform the department of the reasons for his change in stance. This would discourage a charge of willful suppression being laid at his door by the department, on the ground that ordinary prudence of full disclosure has not been exercised by the appellant according to the standards of a reasonable man. However, that being so, as per **Article 265 of the Constitution of India**, no tax can be levied or collected except by authority of law. The department cannot charge and collect excess amount of tax than that which is due by law and payable by the assessee. This would apply even in the case of self-assessment. Further tax cannot be collected by consent of parties. It can only be levied as per the mandate of a taxing statute.

6. The burden of showing that the goods are marketable is on the department. No samples have been tested to determine the shelf life of the impugned goods, nor has a study of its marketability been done. The Hon'ble Supreme Court in **Bhor Industries Ltd. Vs Collector of Central Excise** [1989 (40) E.L.T. 280 (S.C.)] held that simply because a certain article falls within the CETA it would not be dutiable under excise law if the said article is not "goods" known to the market. "Marketability, therefore, is an essential ingredient in order to be dutiable under the Schedule to Central Excise Tariff Act, 1985." We find that the department has not discharged its burden of showing that the

goods were marketable and hence the 'sugar invert syrup' manufactured by the appellant is not exigible to Central Excise duty.

7. The issue is no longer res integra as the matter relating to the earlier period has been decided by this Tribunal in the appellants own case i.e. **Modern Bakers** (supra). Para 6 of the Order is reproduced below.

> "6. The issue is whether the sugar syrup, which is an intermediate item and captively consumed can be subject to levy of duty. The said issue is decided by the Tribunal in the case of *M/s. Badami Foods* (supra) and *M/s. Rishi Bakers Pvt. Ltd., Vs Commissioner of Central Excise & Service Tax, Kanpur* reported in *2018 (328) E.L.T.634 (Tri.-Del.)*. On similar set of facts the contention of the department that sugar syrup is marketable and, therefore, subject to levy of duty was rejected by the Tribunal. The department does not have a case that they have conducted any test to prove the element of fructose contained in sugar syrup in these appeals. The decision in *M/s. Rishi Bakers Pvt. Ltd*. (supra) as well as *M/s. Badami Foods* (supra) would squarely apply to the facts of the present case. Following the said decisions, we are of the view that the demand cannot sustain. The impugned order is set aside. The appeals are allowed with consequential relief, if any."

Our independent findings echo the Order. It has not been informed to us by either parties that the said order has been set aside or modified by a higher appellate forum. Hence judicial disciple also requires us to follow the ratio stated therein.

8. For the reasons discussed above the impugned order is set aside and the appeal is allowed. The appellants are eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 23.09.2025)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

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