CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 28086 of 2013

(Arising out of **Order-in-Appeal** No.57/2013 (H-IV) CE dated 31.07.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

M/s Sumo Foods Pvt Ltd., .. **APPELLANT**
7-4-40,
Gaganpahad Indl.area,
Hyderabad,
Telangana – 500 004.

VERSUS

Commissioner of Central Excise Hyderabad .. **RESPONDENT**
Kendriya Shulk Bhavan,
L.B Stadium Road,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

AND

Excise Appeal No. 31109 of 2017

(Arising out of **Order-in-Appeal** No.HYD-EXCUS-002-APP-28-17-18 dated 17.07.2017 passed by Commissioner of Customs & GST (Appeals-I), Hyderabad)

M/s Sumo Foods Pvt Ltd., .. **APPELLANT**
7-4-4,
Gaganpahad Indl. Area,
Hyderabad,
Telangana – 501 323.

VERSUS

Commissioner of Central Excise Hyderabad - I .. **RESPONDENT**
L.B Stadium Road,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

APPEARANCE:
Ms. Padmavati Patil, Advocate for the Appellant.
Shri V.R. Pavan Kumar, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30259-30260/2026

Date of Hearing: 29.01.2026
Date of Decision: 04.05.2026

[ORDER PER: ANGAD PRASAD]

M/s Sumo Foods Pvt Ltd., (hereinafter referred to as appellant) has filed both appeals against the Order-in-Appeal Nos. 57/2013 (H-IV) CE dated 31.07.2013 and HYD-EXCUS-002-APP-28-17-18 dated 17.07.2017 (here in after referred to as the impugned order). Since, the issue involved in both the appeals are common, the same were heard together and are being disposed of by this common order.

2. Appeal No. E/28086/2013 pertains to the period from 01.07.2008 to 31.03.2011 and where Appeal No. E/31109/2017 relates to the period from 01.04.2011 to 11.09.2011. By impugned orders Learned Commissioner (Appeals), upheld Order-in-Original Nos. 101/2012-CEx dated 24.12.2012 and 18/2016 dated 28.07.2016, whereby excise duties along with applicable interest were confirmed.

3. Briefly stated the fact of the case are that the appellant are engaged in the manufacture of Biscuits, on a job-work basis, for the principal manufacturer, M/s. Parle Products Pvt Ltd., at their factory situated at Hyderabad. In the course of manufacture, sugar syrup is prepared within the factory by mixing sugar with water and a small quantity of citric acid, followed by heating the said mixture and after cooling the same, the said syrup is thereafter used captively in the manufacture of biscuits.

4. In respect of Appeal No. E/28086/2013, the Adjudicating Authority vide Order-in-Original dated 24.08.2010 had confirmed the demand and imposed a penalty of Rs. 10,00,000/- under Rule 25 of Central Excise Rules (CER). In appeal, the Commissioner (Appeals) vide Order-in-Appeal dated 31.01.2011, remanded the matter back to Adjudicating Authority for limited

purpose of examining the marketability of sugar syrup. The Department challenged the said order before the Tribunal and Tribunal vide Order No. 931/2011 dated 28.12.2011, remanded the matter back to Adjudicating Authority with a direction to re-examine the issue in accordance with law.

5. In the de-novo proceedings, vide Order-in-Original No. 101/2012 dated 24.12.2012, the Adjudicating Authority adjudicated two notices to Show Cause dated 04.08.2009 and 01.06.2010, along with another notice to Show Cause dated 02.05.2011 covering the period from April 2010 to March 2011. A total demand of Rs. 19,24,935/- was confirmed on the sugar syrup and penalty of Rs. 12,00,000/- under Rule 25, Central Excise Rule (CER), 2002, On the finding that sugar syrup is an excisable product classifiable under tariff item 17029090 and is marketable.

6. The Commissioner (Appeals), vide impugned order dated 24.12.2012, upheld the confirmation of demand and interest but reduced the penalty to from 12,00,000/- to 2,50,000/-.

7. In Appeal No. E/31109/2017, the period involved 01.04.2011 to 11.09.2011. The Adjudicating Authority confirmed the demand of excise duty to Rs. 218826/- and imposed penalty Rs. 25,000/- under Rule 25 of the Central Excise Rules 2002. On appeal, Learned Commissioner (Appeals), upheld the demand but reduced penalty Rs. 5500/- from Rs.25,000/-.

8. Aggrieved by the above orders, the appellants filed the present appeals before this Tribunal.

9. Learned Counsel for the appellant submitted that sugar syrup is prepared strictly as per the specifications/ formula prescribed by the

principal manufacture, M/s Parle Products Pvt Ltd., is suitable for use exclusively and in "Parle" branded Biscuits. It was further submitted that such in-process syrup is neither marketable nor capable of being sold in open market, the syrup is prepared by adding specified quantity of sugar to water along with meagre quantity of citric acid and is used captively in manufacture of biscuits. It does not have any shelf-life and is not marketable. The Department has neither adduced any evidence to substantiate that the intermediate product sugar syrup prepared and captively consumed by the appellant in manufacture of final product, has any shelf-life nor has it conducted any test of the said sugar syrup prepared by the appellant in their factory. Therefore, demand of duty on sugar syrup treating the same as marketable is not sustainable.

10. Learned Counsel for the appellant further submitted that the contention of the Department that the sugar syrup is classifiable under 170290 is not correct, in as the fructose content is only 31% as certified by ShriRam Institute for Industrial Research, in support of in this contention reliance has been placed the decision of the Tribunal in Rishi Bakers Pvt Ltd., [2015 (328) ELT 634 (Tri.-Del.)], wherein, it was held that classification of sugar syrup under tariff 17029090 is not sustainable in absence of any evidence produced by the Department to establish that the fructose content in dry stage, was 50% or more.

11. It is further submitted that the contention of the Department representative that the condition of "containing in the dry stage 50% by weight of fructose" is not applicable for determining classification of 'invert sugar' is misplaced as the said condition applies only to 'sugar syrup blends

and not to all categories such as invert sugar or others'. Acceptance of the Department's interpretation would amount to reading the word "and" as "or" in the expression "invert sugar", other sugar and sugar syrup, which is impermissible in law.

12. Learned Counsel for the appellant further submitted that the reliance placed by Department on the report of the chemical examiner dated 23.07.2014, Customs House, Chennai is misplaced. The said report certifies that the product of the appellant contains of 44.17% of reducing sugar and 46.8% of invert sugar. Based on this report the OIO dated 28.07.2016 concludes that the product is 'invert sugar'. However, no tests have been conducted to determine the fructose content in the sugar syrup prepared by the appellant. Further, the test report itself records that it is not possible for the laboratory to determine the percentage of individual constituents or self-life of the sample. Therefore, such a report cannot from the basis for concluding that the product is marketable or classifiable under tariff item 17029090.

13. Learned Counsel for appellant further submitted that the contention of Department that the product is invert sugar and not sugar syrup, is factually incorrect. It is pointed out that in all the notices to Show Cause, Orders-in-Original, Orders-in-Appeal as well as submissions made by the appellants before Lower Authorities and this Tribunal, the disputed product has consistently been treated as sugar syrup and not invert sugar. Therefore, submissions made by Learned AR are contrary and without any factual or legal basis.

14. Learned Counsel for the appellant further submitted that the Tribunal and various Judicial Fora, including this bench have consistently held that sugar syrup prepared captively and used in the manufacture of biscuits is not marketable. Reliance is placed on a catena of decisions wherein, under similar circumstances, it has been held that such in-process sugar syrup, having no independent marketability or shelf-life, does not qualify as excisable goods.

(i) Rishi Bakers - [2015 (328) ELT 634 (T)]

(ii) Lingraj Biscuits – Hon'ble CESTAT – Kolkata vide Final Order no. 77612/2025 dated 30.10.2025

(iii) Badami Foods – Hon'ble CESTAT – Hyderabad vide Final Order No. 30574/2019 dated 17.06.2019

(iv) Lucky Biscuit – [2017-TIOL-3841-CESTAT-KOL]

(v) Venugopal Foods – Hon'ble CESTAT Order No.A/85151-85152/2019 dated 22.01.2019

(vi) Venugopal Foods – [2019-TIOL-11-CESTAT-MUM]

(vii) M.B.Bakers – [2017-TIOL-249-CESTAT-DEL]

(viii) Parle Biscuits – [2017-TIOL-4475-CESTAT-DEL]

(ix) patwari Bakers – hon'ble CESTAT – Chennai vide Final Order no. 40548-40550/2023 dated 11.07.2023

(x) Balaji Bakers – Hon'ble CESTAT – Allahabad vide Final Order No. 72343-72350/2018 dated 09.11.2017

15. Learned Commissioner as well as Adjudicating Authority have placed reliance on the judgment of Hon'ble Supreme Court in Bhor Industries Ltd., Vs CCE [1989 (40) ELT 280], wherein, it was held that PVC sheets used for manufacture of adhesive tapes, being is not marketable, are not liable to Central excise duty. The ratio of the said judgement, in facts, supports the case of appellants, in as much as sugar syrup in the form in which it

emerges during the manufacturing process, is not marketable and therefore, not liable to Central Excise Duty.

16. Learned Authorized Representative for the Department reiterates the findings of the impugned order, inter-alia, submitted that product "sugar syrup" is classifiable under tariff 17029090, the goods is excisable and marketable. Exemption under Notification No.67/95-CE is not available since final product is exempted.

17. Learned Authorized Representative submitted that, as per the records, the process of manufacture of sugar syrup involves mixing sugar with water and meagre quantity of citric acid and then mixture is heated in a tank and thereafter cooling the same. Thus, a distinct product, namely sugar syrup, emerges through this process, which amounts of manufacture within the meaning of Section 2(f) of Central Excise Act, 1944. It is further submitted that the product satisfies the definition of 'excisable goods' under Section 2(d) of Central Excise Act, 1944, as it is classifiable under chapter sub-heading 17029090 of Central Excise Tariff Act.

18. Learned Authorized Representative submitted that marketability denotes a product is capable of being sold in the market and actual sale in the market is not necessary conditions. In support of this contention, reliance has been placed on Hon'ble Supreme Court judgment in the case of Bhor Industries Ltd.

19. Learned Authorized Representative further submitted that in compliance with directions of this Tribunal, the Adjudicating Authority got the sample of 'sugar syrup drawn from the factory. The test report reveals that which it was not possible to determine percentage of individual constituents

of the products, or the shelf-life, it records of the contents of reducing sugar 43.3% and invert 47.9%'. It is further submitted that the test report produced and relied upon by the appellant, also describes the product as invert syrup. Hence, there is no scope of any doubt that the sugar syrup product in question is invert syrup and it is settled law that admitted fact need not to be proved. The invert sugar has got wide market including export and is being sold in cans, bottles and jars at various stores as well as available online. Therefore, subject goods are marketable.

20. We have heard both the sides and perused the records with their submissions.

21. Admittedly, the sugar syrup manufactured by the appellant has been consumed by them captively within the factory premises. The sugar syrup manufacture by the appellant is specific to their own requirement the same could not be equated with any other sugar syrup. It is generally available in the market, wherein, preservatives are used for longer shelf life.

22. We also find that the issue is not more res-integra, the New Delhi Tribunal in the case of Rishi Bakers, supra, has held as under:

> "7. The dispute in the present case is as to whether sugar syrup made by the appellant for captive use in the manufacture of exempted biscuits is chargeable to Central Excise duty under sub-heading 1702 90 90 of the Central Excise Tariff. The Department's contention is that since the sugar syrup is used in the manufacture of the exempted biscuits, the benefit of Notification No. 67/95-C.E. would not be available. In this regard, the contention of the appellant is that in terms of the proviso to Notification No. 67/95-C.E., the full duty exemption to intermediate products being used for captive consumption is available if a manufacturer discharges the obligation under Rule 6 of the Cenvat Credit Rules. We do not accept this plea, as in terms of proviso to Notification No. 67/95-C.E., the full duty exemption to intermediate product is available under this notification, even if the manufacturer has manufactured, in addition to exempted final product, a dutiable final product also by using common Cenvat credit availed inputs

and in respect of exempted final product, he has discharged the obligation prescribed under Rule 6 of the Cenvat Credit Rules. In this case, it is now known as to whether the appellant throughout during the period of dispute, were also manufacturing only exempted final product or along with the exempted final product were also manufacturing dutiable final product. The proviso to notification is applicable only in a situation where by using common Cenvat credit availed inputs, a manufacturer manufactures dutiable as well as exempted final product>and in respect of the exempted final product, the obligation under Rule 6 of the Cenvat Credit Rules has been discharged. Shri Patil in this regard has cited the judgment of the Tribunal in the case of Sakthi Sugars Ltd., Vs CCE, Salem reported in 2008 (230) E.L.T. 676 (Tri. – Chennai). We have gone through this judgment. In our view ratio of this judgment is not applicable to the facts of this case.

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 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 1702n 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 stage. In these cases, the appellant's plea from the very beginning has been that the fructose sugar content is less than 5% 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., Vs 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., Vs 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., Vs 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. Dampur 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 degrees) and the same is a mixture of glucose (with specific rotation of +52.7 degrees) and fructose (with specific rotation of -92 degrees), with net specific rotation of -19.7 degree. The process of hydrolysis of cane sugar (which is dextrorotatory i.e. with rotation of + 66.5 degrees) is also called inversion, as the mixture of glucose and fructose formed by this process is levorotatory with sp. Rotation of – 19.7 degrees 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., Vs CCE & Cus. (supra), Nicholaas piramal India Ltd., Vs CCE, Mumbai (supra) and Medley Pharmaceuticals Ltd., Vs 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."

23. 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 M/s Lingaraj Biscuits Pvt Ltd., supra, M/s Badami Foods, supra, M/s

Lucky Biscuit Company, supra, Venugopal Foods Pvt Ltd., supra, Parle Biscuits, supra, M/s Patwari Bakers Pvt Ltd., supra.

24. This Bench also in the case of M/s Badami Foods, supra, 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 allleges 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."

25. In the present case admittedly the fructose content 31% as certified by Shriram Institute for Industrial Research. Therefore, the said syrup cannot be covered under SH No. 1702 90 of CETA as SH No. 1702 90 covers only such syrup blends which contains 50% fructose by weight in dry stage. The demand of duty is on the sugar syrup which is manufactured and captively consumed by the appellant who is clearly exempted goods are biscuit. It is the case of Department that the said sugar syrup is a 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. Therefore, the sugar syrup is not classifiable under 1702 9090 as claimed by Department.

26. Therefore, respectfully following the ratio laid down in the above referred case laws, we set aside the impugned order and allow the appeal on merits.

27. Accordingly, appeals are allowed.

(Pronounced in the open court on 04.05.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha