Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 1

EXCISE Appeal No. 11396 of 2013- DB

(Arising out of OIA No. 30-2013-AHD-III-SKS-COMMR-A-AHD dated 27.02.2013 passed by Commissioner (Appeals) of Central Excise-Ahmedabad-III)

Etc Agro Processing Pvt Limited ....**Appellant**
Mehemadabad-Nadiad Road,
Varsola, Mehemadabad,
Kheda, Gujarat -387130

VERSUS

Commissioner of Central Goods &
Service Tax and Central Excise- Gandhinagar ......**Respondent**
2nd Floor, Customs House,
Near All India Radio, Navrangpura,
Ahmedabad, Gujarat-380009

APPEARANCE:
Mrs. Rinki Arora with Shri Mayur Jain, Advocate for the Appellant
Shri R R Kurup, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10598/2026

DATE OF HEARING: 16.07.2026
DATE OF DECISION: 31.08.2026

SATENDRA VIKRAM SINGH

The present appeal has been filed by M/s ETC Agro Processing (India) Pvt Ltd., Mehemadabad, Dist.- Kheda, Gujarat against impugned Order-In-Appeal dated 27.02.2013 passed by the learned Commissioner (Appeals).

1.1 The appellant was engaged in the manufacture of Parle brand Biscuits falling under CTH 1905 9020 of the Central Excise Tariff Act, 1985. They also manufacture "Sugar syrup" and consume the same captively for the manufacture of biscuits. During the period from September 2009 to 11th September, 2011, appellant manufactured biscuits which were exempt from duty under Notification No.03/2006-CE dated 01.03.2006 and therefore, as per department, appellant was not entitled to duty free captive consumption of sugar syrup. The appellant should have paid the excise duty on "sugar syrup" coming into existence at intermediate stage. Accordingly, Revenue issued them a show cause notice dated 29.11.2011 proposing recovery of Central Excise duty of Rs. 49,68,469/- under Section 11A(4) along with interest under Section 11AB (now Section 11AA) of the Central Excise Act, 1944 and penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the said Act.

1.2 The above show cause notice was decided by the Additional Commissioner vide order dated 28.02.2012 who confirmed the above demand of Central Excise duty under proviso to Section 11A(1) for the period prior to 07.04.2011 and under Section 11A(4) for the period thereafter, alongwith interest and also imposed a penalty of Rs. 49,68,469/- upon the appellant under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. Aggrieved with this order, appellant filed appeal before the Commissioner (Appeals) on the ground that sugar syrup manufactured by them is not marketable and therefore, it is not excisable goods. In support, appellant relied on the decision of Hon'ble Supreme Court in the case of Hindustan Zinc Ltd reported at 2005 (181) ELT 170 (SC) and the Tribunal's decision in the case of Rajesh Parekh reported at 2007 (214) ELT 308 (T). The appellant also claimed that the Government issued Notification No. 39/2011- CE dated 12.09.2011 which inserted entry No. 19 in Notification No. 10/96 dated 23.07.1996 w.e.f. 12.09.2011, by virtue of which sugar syrup and flavoured cream which were intermediate products captively used for manufacture of biscuits, have been exempted from the duty. After considering various submissions made by the appellant, the Appellate Authority rejected their appeal and upheld the order of the Additional Commissioner. Aggrieved with this order, appellant filed the present appeal before this Tribunal.

2. In their appeal, appellant took the following grounds and prayed for allowing their appeal by setting aside the impugned order.

- Sugar syrup is not marketable, which fact they intimated to the Divisional Assistant Commissioner vide order dated 22.04.2009. They rely on the following decisions:-
  a) Lilli Foam Ind. 1990 (46) ELT 462 (T)
  b) Metlex (I) Pvt. Ltd. - 2004 (165) ELT 129 (SC)
  c) Asian Peroxide Ltd. - 2003 (155) ELT 431 (SC)
- The, revenue has not discharged the burden of proving marketability of sugar syrup as they have neither tested the said goods nor produced any document indicating shelf-life of sugar syrup. They rely on following decisions:-
  a) Texmaco Ltd. 2008 (221) ELT 535 (T)
  b) Board of Trustees - 2007 (216) ELT 513 (SC)
  c) Hindustan Platinum Ltd. - 2007 (216) ELT 298 (T)
  d) Hindustan Zinc Ltd. - 2005 (181) ELT 170 (SC)
  e) Rajesh Parekh - 2007 (214) ELT 308 (T)
  f) Moti Laminates Pvt. Ltd.-1995 (76) ELT 241 (SC)
  g) Gujarat State Fertilizers-1996 (84) ELT 539 (T)
- For charging Central Excise duty, an article should be 'goods' as defined under Section 2(d) of the Central Excise Act, 1944 and it should come into existence as a result of process of manufacture. In their case, both the conditions are not satisfied.
- Hon'ble Supreme Court in the case of Union of India Vs. Delhi Cloth & General Mills Co. Ltd reported at 1977 (1) ELT J-199 (SC) has held that for an article to be called 'goods', it should be known in the market as such and can ordinarily come to the market for being bought and sold. They manufacture sugar syrup as per their own specifications, which does not come to the market for being bought and sold and therefore, it does not fall within the definition of goods. The ratio of this decision has been followed in series of decisions.

- Mere fact of having some shelf life to syrup by itself does not prove marketability as held by Hon'ble Apex Court in the case on FGP Ltd Vs. Union of India reported at 2004(168) ELT 289 (SC).
- Hon'ble Delhi High Court in the case of Indofil Chemicals Vs. UOI reported at 1994 (73) ELT 9 (Del.) has held that in-process material of transient character having no independent identity and not proved by Department to be marketable, could not be treated as goods.
- In following decisions, it has been held that sugar syrup coming into existence at intermediate stage, is not marketable:-
  a) CCE V/s. Raptakos Brett 2006 (194) ELT 101(T)
  b) Sakthi Soft Drinks - 2003 (154) ELT 247 (T)
  c) CCE V/s. Venkatesh Bevergaes - 2001 (128) ELT 75 (T)
  d) Pfizer Ltd. - 2002 (146) ELT 477 (T)
  e) Pfizer Ltd. 2003 (151) ELT A-305 (SC)
  f) Pfizer Ltd. 1999 (112) ELT 1035 (T)
  g) Mysore Sugar Co. Ltd. 2008(231) ELT 624 (T)
  h) Rhone Poulenc (India) Ltd. - 2005 (187) ELT 336 (T)
- Vide Notification No. 39/2011-CE dated 12.09.2011, entry No. 19 was inserted in Notification No. 10/96-CE dated 23.07.1996 exempting the sugar syrup captively consumed by the appellant. This shows that the Government had no intention to levy duty on sugar syrup coming into existence at intermediate stage for manufacture of biscuits.
- While interpreting a Notification, intention of the Government has to be considered as any interpretation which would make law absurd, is not to be done, as held in the following decisions:-
  a) Black Diamond Beverages - 1998 (103) ELT 655 (T)
  b) Precision Rubber Industries 2005 (183) ELT 218 (T)
  c) Indian Tobacco 2005 (187) ELT 162 (SC)
- When two interpretations are possible, one beneficial to assessee should be preferred, as held in the following cases:-

a) Sun Export Corporation 1997 (93) ELT 641 (SC)

b) Poulose and Mathen 1997 (90) ELT 264 (SC)

c) Lotus Inks 1996 (87) ELT 580 (SC)

d) Liberty Oil Mills P.Ltd. 1995 (75) ELT 13 (SC)

e) Deepak Mahajan 1994 (70) ELT 12 (SC)

- The classification of sugar syrup under CTH 1702.19 is not correct as this entry is meant for "Others" which cover Lactose and Lactose syrup.
- As an alternate argument, if it is held that sugar syrup is dutiable, they are entitled to Cenvat Credit of Rs.19,21,481/- on sugar used to manufacture sugar syrup. They relied on the decision in the case of Roche Products Ltd Vs. CCE reported at 1995 (78) ELT 127 (Tri.-Bang.).
- It has been held in the following cases that Cenvat credit should be allowed before arriving at the duty liability-

a) Bhilwara Synthetics Ltd. - 2002 (143) ELT 22 (SC)

b) Garware Synthetics -2000 (125) ELT 740 (T)

c) Bharat Wagon 2001 - (44) RLT 557 (T)

d) Ajay Industrial 2002- (51) RLT 165 (T)

- Allegation of suppression is not sustainable against them as vide letter dated 22.04.2009, they had intimated the Division Assistant Commissioner regarding non-payment of duty on sugar syrup. If the department did not verify this information in time, it should not go against them. As there is no *mens rea* in the instant case, neither extended period is invokable nor are they liable to any penalty. They relied on the following decisions:-

a) Rajasthan Spinning & Weaving Mills-2009 (238) ELT 3 (SC)

b) Singhal Strips Ltd. - 2010 (256) ELT 15 (P&H)

c) J. R. Fabrics 2009 (238) ELT 209 (P&H)

d) Thirumala Alloys Castings - 2009 (238) ELT 226 (Mad)

e) K. P. Pouches - 2008 (228) ELT 31 (Del)

f) Hindustan Steel Ltd - 1978 (2) ELT J-159

3. During arguments, learned Advocate emphasized that the appellant manufactures sugar syrup in his factory as per the specifications provided by M/s Parle and consumes the same in manufacture of Parle brand biscuits. These goods being of a particular specification, are not marketable and hence, not excisable. The demand of differential excise duty as confirmed by the lower authorities is therefore, not sustainable. He placed reliance on the decision of CESTAT Mumbai in the case of Shiv Shakti Processed Foods Vs. Commissioner of Central Excise, Pune-I reported at 2023 (11) TMI 147 wherein it was held that sugar syrup produced as intermediate goods for use in the manufacture of biscuits that were exempt from payment from duty, is also exempt. Learned Advocate also relied on the decision of CESTAT Mumbai in the case of M/s Venugopal Foods Pvt Ltd Vs. Commissioner of Central Excise, Pune-I reported at 2022 (2) TMI 665 wherein it was held that in absence of any test report to contradict the fructose content in the sugar syrup produced by the appellant, sufficient reasons are not there to consider the impugned goods to be excisable within the meaning of Section 2(d) of the Central Excise Act, 1994. While deciding this matter, the Tribunal relied on their earlier order in the case of M/s Venugopal Foods Pvt Ltd itself reported at 2019 (3) TMI 25. To strengthen its case that sugar syrup manufactured by appellant is not marketable, learned Advocate referred to other decisions namely, Disha Foods Pvt Ltd 2019 (370) ELT 1386 (Tri.- Hyderabad), Lucky Biscuits Co. {2017 (7) TMI 235}, Utsav Food Products Vs. CCE and ST, Ahmedabad-III 2023 (4) TMI 1071 - Cestat Ahmedabad. In view of the above cited decisions, learned Advocate pleaded that they are not liable to pay any excise duty on intermediate product "sugar syrup" which is not excisable goods being not marketable. He also pleaded for non-invocation of extended period in the case and non-imposition of any penalty on them.

3.1 Learned Advocate further submitted that the department has not conducted any test to prove that element of fructose contained in the sugar syrup. He placed reliance on the following cases to support his argument:-

- M/s Lingraj Biscuits Pvt. Ltd vs Commr. of CGST & Central Excise, BBSR vide Final order no 77612/2025 dated 30 October 2025
- Modern Bakers (Madras) Pvt. Ltd vs Commissioner of GST & Central Excise vide Final order no 41033/2025 dated 23 September 2025.

In addition, he also enclosed three letters: one dated 09.07.2009 of M/s Pankaj Traders, Raipur; second letter dated 11.07.2009 of M/s Shashikant Brothers, Godhra, Gujarat; and the third letter dated 21.07.2009 of M/s N.K. Enterprises, Malad (W), Mumbai, to substantiate that sugar syrup manufactured by them is not marketable. The relevant part of the letter mentions that- *"such sugar syrup has a very short shelf life. I was asked whether I would purchase such sugar syrup for sale. I would not purchase the syrup as it would be impossible to sell the same. According to me the syrup is incapable of being sold in the market. This is to the best of our knowledge and information."*

In view of the above, Learned Advocate pleaded to allow their appeal and set aside the demand.

4. Countering the arguments, learned AR pleaded that percentage of sugar content in sugar syrup manufactured by the appellant is 80% as it contains 800gms of sugar in 1kg of sugar syrup. Explaining the manufacturing process, he mentioned that 800gms of sugar with 200ml of water and meager quantity of citric acid is mixed and then heated up to 118°C in a tank and then cooled to get the sugar syrup of the required specification/formula. The appellant uses this sugar syrup for manufacture of Parle brand biscuits. He mentioned that Hon'ble Tribunal in the case of Cadbury India Ltd reported at 1998 (104) ELT 457, has held that sugar syrup obtained by dissolving sugar crystal in water is a manufactured product and is separately classifiable under

CTH 1702.30. When captively used in manufacturing of confectionery items, it is liable to duty. He also relied on the decision of CESTAT Bangalore in the case of Mysore Sugar Company Ltd Vs. Commissioner (Appeals) reported at 2008 (231) ELT 624, wherein it was held that sugar syrup having sugar content of 65% by weight is a dutiable item. He supports his arguments by relying on the decision of CESTAT Chennai in the case of Pepsico India Holding Ltd Vs. CCE, Chennai reported at 2009 (245) ELT 707 wherein at para 3, it was held that sugar syrup having sugar concentration of above 65%, resistant to fermentation and deterioration as per report of Chief Chemist, is stable with shelf life. It is also sold to distributors for ultimate sale to individual fountain retailer, hence no further evidence required to establish marketability of goods.

4.1 For marketability and dutiability of a product, learned AR relies on the following decisions of the Apex Court wherein it was held that *"actual marketing/ sale of product not necessary to make a product excisable. So long as product is capable of being marketed, it is excisable. Marketability a decisive test of dutiability and not actual marketing. Further, general availability in market also not relevant because even if goods are available from one source, these are marketable."*

a) CCE, Bangalore vs. Karnataka Soaps & Detergents Ltd.-2017 (355) ELT 161 (S.C.)
b) M/s. Escorts Ltd. vs. Commissioner of Central Excise, Faridabad-2015 (319) ELT 406 (SC)
c) South Bihar Sugar Mills Ltd. Vs. UOI-1978 (2) ELT (J 336) (SC)
d) Medley Pharmaceuticals Ltd. Vs. CCE, Daman - 2011 (263) ELT 641 (SC)

4.2 For leviability of excise duty on sugar syrup, learned AR relied upon the following decisions of the Tribunal:-

a) CCE, BELGAUM Vs M/S. VIJAYNAGAR FOOD PRODUCTS PVT. LTD.- 2024 (12) TMI 1296
b) THE MAHARASHTRA AGRO INDUSTRIES DEVELOPMENT CORPORATION LTD., VS CCE, NAGPUR-2017 (2) TMI 244
c) Cadbury India Ltd VS CCE, PUNE -1998 (104) ELT 457 (Tri))
d) 2008 (231) ELT 624 (Tri-bang))
e) 2009 (245) ELT 707 (Tri-Chennai)

In view of the above, He pleads that the lower authorities have correctly held that sugar syrup manufactured by the appellant is an excisable goods. When same is captively consumed to manufacture exempt biscuits, it is leviable to excise duty.

4.3 On appellant's alternate submissions for allowing Cenvat credit of duty paid on sugar consumed in the manufacture of sugar syrup, learned AR mentioned that availment of Cenvat credit is subject to following certain procedures including receipt of duty paid inputs in factory and availability of duty paying invoices. This being a factual issue, needs to be looked into by the lower authority. On limitations, he mentioned that the appellant had suppressed the fact of captive consumption of sugar syrup in the manufacture of exempted biscuits which fact came to light only when officers gathered intelligence. In view of this, he justified invocation of extended period in this case by the lower authorities for demanding duty for larger period and imposition of mandatory penalty under Section 11AC of the Central Excise Act, 1944.

5. We have heard the counter views. The main issue to be decided in this case is whether "sugar syrup" manufactured by the appellant in his factory and captively used in the manufacture of exempted Parle brand biscuits, is leviable to excise duty or not?

5.1 For levy of excise duty on an article, it should fall within the definition of Excisable goods as defined under Section 2(d) of the Central Excise Act, 1944, as per which, *excisable goods* means, goods specified in the fourth scheduled as being subjected to a duty of excise and includes salt. An explanation to this sub-section was inserted by the Finance Act, 2008 which provides that- for the purposes of this clause, *'goods'* include 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.

5.2 In the decisions relied upon by the appellant namely case of Shivshakti Processed Foods, Ustav Foods products, Patwari Bakers Pvt, Badami Food & Lucky Biscuits Company, decision was given in favour of the party on the ground that the sugar syrup so manufactured, was not found to be marketable. Learned Advocate in the present case also pleads that vide letter dated 22.04.2009, they had intimated the Division Assistant Commissioner that the sugar syrup manufactured by them as per specifications/formula of the principal, is suitable for manufacture of Parle brand biscuits only. Such in-process syrup is neither available in the market nor is capable of being brought to the market for being bought or sold. Such sugar syrup as being used by the appellant, is not known to the market, therefore, it is not marketable. It is his claim that post this letter, they discontinued duty payment on the sugar syrup.

5.3 In the relied upon cases, the appeal of the respective party for non-levy of excise duty on sugar syrup was held in their favour on the ground that fructose content has not been tested or established to be 50%. In some cases, it was found to be lower than 50% and, on that reasoning, it was held that such sugar syrup is not excisable goods and hence, not leviable to excise duty. In the present case, we however find that the appellant in their written defence reply dated 29.12.2011 to the show cause notice, have themselves described the manufacturing process of sugar syrup. The relevant part of their letter is reproduced below:-

"For use in manufacture of biscuits, sugar syrup is prepared inside the factory by adding sugar 800 gram with 200 ml water per kilo and meagre quantity of citric acid which mixture is heated upto 118 degree in a tank and then cooled. The syrup is then admixed with other ingredients of biscuits to help sugar dissolve in the ingredients fully. The sugar syrup prepared is an intermediate item which is made as per our own specifications/ formula suitable for use exclusively in Parle Branded Biscuits manufactured for the Principals."

It is therefore clear that the case of the appellant is different on facts as compared to relied upon cases. Therefore, cases relied upon by the appellant are clearly distinguishable. We rely on the decision of Hon'ble Supreme Court in the case of Collector of C. Ex., Calcutta Vs. Alnoori Tobacco Products reported at 2004 (170) ELT 135 (SC) wherein it has been held that an earlier decision should be adopted only when facts of both the cases are same. The relevant para 13 and 14 of the said decisions are as under:-

***"13**. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

***14**. The following words of Lord Denning in the matter of applying precedents have become locus classicus :*

> *"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.''*
>
> *********
>
> *"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."*

5.4 Learned AR on the other hand has relied on the decision of Hon'ble Superme court in the case of CCE, Bangalore Vs. Karnataka Soaps & Detergents Ltd. reported at 2017 (355) ELT 161, wherein it was held that for test of marketability, actual marketing/sale of the product is not necessary. So long as the product is capable of being bought and sold, it is excisable. Marketability is a decisive test of dutiability and not actual marketing. Further, general availability in the market also not relevant because even if goods are available from one source, these are marketable. We find that in the case of CCE, Belgaum Vs. M/s Vijaynagar Food Products Pvt ltd., CESTAT Bangalore has examined excisablity of sugar syrup having sugar content of 78.2% by weight emerging as an intermediate product, during the course of manufacture of exempt biscuits. The Tribunal considered the decision of Hon'ble Apex Court in the case of Karnataka Soaps and Detergents Ltd (cited supra) and in the case of Escorts Ltd (cited supra) dealing with excisability and dutiability of an article. It is also considered Tribunal's decision in Mysore Sugar Co. Limited case and decision in the case of Pomsy Food Products (P) Ltd which discusses letter dated 15.05.1996 of the CRCL, New Delhi as contained at para-9 of the CBIC circular No. 780/13/2004-CX dated 12.03.2004. After analysing various decisions in the instant case, CESTAT Bengaluru has held that sugar syrup containing more than 65% by weight of sugar is both marketable and hence, excisable goods. The relevant para 7,8,9,10, 11 & 12 of the said decision are reproduced below:-

> *7. In Karnataka Soaps & Detergents Ltd. case, explaining the scope of marketability, their Lordships observed as follows :*
>
> > *"11. The next question for consideration is whether actual marketing of the perfumery compound manufactured by the respondent is necessary for the levy of excise duty. It is settled that to hold the product as excisable/dutiable, actual marketing/sale of goods is not necessary. What is required to be proved is that the capability of marketing the product. Marketability is decisive test for dutiability. Whether the goods are, in fact, marketed or not is of no relevance. It is also not necessary that goods in question should be generally available in the market. Even if the goods are available from only one source or from a specified market, makes no difference so long as they are available for purchasers. [See A.P. State Electricity Board v. Collector of Central Excise, Hyderabad, (1994) 2 SCC 428 = 1994 (70) E.L.T. 3 (S.C.)].*

12. In Escorts Limited v. Commissioner of Central Excise, Faridabad, (2015) 9 SCC 109 = 2015 (319) E.L.T. 406 (S.C.), this Court has held that for excise duty to be chargeable under the constitutional entry read with Section 3 of the Central Excise Act, two pre-requisites are necessary. First, there must be "manufacture" which is understood to mean the bringing into existence of a new substance. And secondly, the word "goods" necessarily means that such manufacture must bring into existence a new substance known to the market as such which brings in the concept of marketability in addition to manufacture. 'Marketability' is thus essentially a question of fact to be decided on the facts of each case. There can be no generalisation. The fact that goods are not in fact marketed is of no relevance. So long as the goods are marketable, they are goods for the purposes of Section 3 of the Act. It is also not necessary that the goods in question should be generally available in the market. The marketability of articles does not depend neither upon the number of purchasers nor is the market confined to the territorial limits of this country."

8. Also in Escorts Ltd. (supra) case, their Lordship observed as follows :

" 14. From this judgment, Shri Lakshmikumaran wished to emphasise that, as in the said judgment, Transmission Assemblies were not available in the market for being bought and sold, they were not excisable goods not being marketable. As has correctly been pointed out by Mr. Gupta, learned Senior Counsel appearing on behalf of the Revenue, what was held in this judgment is that the product should not be known in the market with any commercial name. The moment a product is commercially known in the sense of fulfilling the practical test of being known to persons in the market who buy and sell, the test is satisfied. The fact that the product is generally not bought or sold or has no demand in the market is irrelevant. It was held in the said judgment that the plastic body is not known as a commercially distinct product in the market and, therefore, if a manufacturer is asked to replace such body, it would not be replaceable not being a commercially known product.

15. The facts in the present case show that Transmission Assemblies of tractors are commercially known products as has been pointed out above. The fact that not a single sale of such Assembly has been made by the appellants is irrelevant. This being the case, we are of the view that the Transmission Assembly of the tractor on the facts before us is clearly an intermediate product which is a distinct product commercially known to the market as such. On this ground therefore, the appellants are not liable to succeed. "

9. A plain reading of the aforesaid judgments reveals that to satisfy the test of marketability, the product need not be bought and sold in the market. If it is capable of being bought and sold, then the test of marketability is satisfied. In similar circumstances, this Tribunal in the case of Mysore Sugar Company Ltd. vs. Commissioner of Central Excise, Mangalore: 2008 (231) ELT 624 (Tri.-Bang.)

considering the excisability of sugar syrup endorsed the view that if the sugar syrup having sugar content of more than 65% by weight, it is marketable, hence, excisable.

> *"7. We have carefully considered the submissions and perused the records. As seen from the citations referred to by the learned Counsel, sugar syrup should have sugar content of more than 65% of weight for considering it as a dutiable as held in the case of Himalyan Vegi Fruits Ltd. v. CCE, Chandigarh (supra), CCE, Indore v. Venkatesh Beverages (supra) and Shivambu International v. CCE, Chandigarh (supra), in both these cases, the matter was remanded for de novo to ascertain the percentage of sugar concentration in the syrup. In the present case, the Revenue has not taken samples to find out the percentage of sugar syrup. It was an important characteristic for determining the solution as sugar syrup or not."*

10. Similar view has also been expressed by this Tribunal in Pomsy Food Products (P) Ltd. (supra) following the earlier precedents that test of marketability to be ascertained referring to the Board Circular, which clarifies it is to be on the basis of sugar content in the sample.

11. From the records, we find that the adjudicating authority referring to the Board's Circular No.780/13/2004-CX dated 12.03.2004 and the test report observed as follows:

> *"9. The letter from Central Revenues Control Laboratory (CRCL) has been enclosed along with the circular. This letter from the CRCL (C. No. 21 EX.0.195, dated the 15th May. 1996) to the Deputy Secretary (C.EX.I), unambiguously clarifies following in response to the query as to whether sugar syrup will have shelf life without adding citric acid in it, that in concentration of 65% by weight or more the solution of sugars such as sucrose in water or other aqueous liquids, will retard the growth of micro-organisms. Thus it may have shelf life without addition of any preservative. As regards the quality of ingredients going to make such a sugar solution/syrup, the CRCL opines that the sucrose must be selected carefully and, purified water free from foreign substance and clean vessels and containers must be used, presumably in order to make a sugar solution/ syrup have the property of having a shelf life. A sample was drawn from the assessees Unit by the range officer and sent for chemical analysis. As per the Chemical Examiner, Chennai Lab report bearing reference Lab Cx No 89/08-09 dated 26.12.08 given on 01.10.2009, The sample is in the form of pale yellow soft solid mass containing Sugar and Water. The total sugar content in the sample as received is 78.2% by weight. Presence of any other additive could not be established'.*
>
> *10. The Tribunal in the case of CCE v/s Venkatesh Bevarages - 2001(128) EL T 75 held sugar solution at intermediate stage containing less than 65% sugar by weight should not be considered as sugar solution. In the instant case, the sugar*

content is 78.2%. The sugar syrup/solution prepared by the party and used by them in the manufacture of biscuits, on a reasonable presumption would have been made with due care by selecting sucrose carefully and by use of water clean from foreign substances and in clean vessels. Such sugar syrup solution made by mixing of sugar sucrose to water and fit enough to be used in biscuits of the kind and brand that have been referred to, also does not appear to suffer from being rendered not marketable on account of it failing to meet the requirements of law regulating its use and exchange. The Ingredients of Parle-G biscuits as listed by the manufacturer are Wheat Flour, Sugar, Partially Hydrogenated Edible Vegetable Oils, Invert Syrup (d Glucose, Laevulose), Leavening Agents [503 (ii), 500 (ii)), Salt, Milk Solids, Emulsifiers [322 or 471 & 481 (i)) and Dough Conditioners [223 land added Flavors (Artificial)."

Thus, the original authority had sufficiently established the test of marketability.

12. In view of the above, we are of the view that the sugar syrup manufactured by the appellant, during the course of manufacture of exempted product namely, biscuits, is stable and marketable; hence, liable to duty being an excisable goods.

However, we find that the issue relates to interpretation of law, therefore, invoking of extended period of limitation cannot be sustained and the demand be restricted to the normal period of limitation."

5.5 In this case, we find that the product "sugar syrup" manufactured by the appellant as per their own admission, contains sugar content of 80% by weight. Hence, issue is no more res-integra in the light of above decisions. Therefore, following above decisions, we hold that sugar syrup manufactured by the appellant is both marketable and hence, excisable goods. On invocation of extended period, the appellant has taken an argument that they had intimated the department in April 2009 itself regarding stopping payment of excise duty on sugar syrup on the ground that the same is not marketable. This contention on verification, is found to be incorrect. The contents of their letter dated 22.04.2009 addressed to the Assistant Commissioner of Central Excise, Division- Nadiad are reproduced as under:-

ETC AGRO PROCESSING (INDIA) PVT. LTD.

Mehmedabad - Nadiad Road, At. Varsola - 387 130 Taluka - Mehmedabad, Dist.- Kheda (Gujarat)
Phone : 0268 - 2586861 Fax : 0268 - 2586862 E-mail : etcagroindia@gmail.com

Date: - 22 / 4 / 2009

The Assistant Commissioner of C. Ex,
Division: - Nadiad.
Central Excise Building,
Near LIC Building,
PIJ Road,
Nadiad

Dear Sir,

Sub :- Our application for C.Ex. Registration -reg.

With reference to above , the ingredients of biscuits , as desired, are as given below for information & records :-

a. Wheat Flour.
b. Sugar,
c. Vanasapati,
d. Flavours,
e. Sugar Syrup (captive consumption).
f. Oils
g. Wrappers
h. Corrugated Boxes

Thanking you,
Yours faithfully
For ETC AGRO PROCESSING (I) PVT. LTD.,

AUTHORISED SIGNATORY

OFFICE OF ASSISTANT COMMISSIONER
CENTRAL EXCISE, NADIAD
SEVOTTAM
22 APR 2009
प्राप्त हुआ/RECEIVED
मंडल नडीआद/DIV. NADIAD

From the above letter, it is clear that the appellant has indicated various ingrediencies used for manufacture of biscuits which includes sugar syrup used captively. Presumably this letter seems to have been written to the Divisional Assistant Commissioner at the time of taking Central Excise registration. It is also seen from their ER-1 returns for the month of September 2009 that they have only indicated duty free clearance of Parle biscuits by taking benefit of Notification No. 3/2006-CE (Sr. No. 18A). They have not shown production and captive use of sugar syrup and therefore, it was not possible for the department to verify whether appellant was manufacturing sugar syrup within the factory and captively consuming the same without payment of central excise duty or purchasing the same from outside. Accordingly, the defence taken by the appellant for non-invocation of extended period is not found to be correct in view of contents of their letter dated 22.04.2009, as reproduced above. We therefore reject their contention and uphold invocation of extended period in the instant case. We also uphold confirmation of demand, recovery of interest and imposition of penalty under Section 11AC of the Central Excise Act, 1994.

5.7 We agree with the alternate submissions of the appellant that in case duty liability on sugar syrup is held, they should be allowed the Cenvat credit on the quantity of sugar so consumed to manufacture sugar syrup. We therefore direct the learned Adjudicating authority to examine/ verify duty paying documents if produced by the appellant and in case, these are found proper, allow the Cenvat credit on that quantity of sugar which has been consumed for manufacture of sugar syrup. With these directions, we remand the matter to the Adjudicating authority for limited purpose of allowing Cenvat credit after verification of duty paying invoices within a period of 4 months. We direct the appellant to expeditiously submit the required documents in case they wish to avail Cenvat credit on sugar consumed for manufacture of sugar syrup.

6. The appeal is partially allowed by way of remand in above terms.

(Pronounced in the open court on 31.08.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha