CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1495 of 2012

[Arising out of Order-in-Original No. 05/CE/Commr/BKJ/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Rohtak]

M/s Parle Biscuits Pvt Ltd **……Appellant**
36.8 KM, Delhi-Rohtak Road,
Village Sankhol, Bahadurgarh,
Haryana 124507

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Rohtak **……Respondent**
SCO 6 to 8 & 10, Sector 1,
Rohtak, Haryana 124001

WITH

Excise Appeal No. 1496 of 2012

[Arising out of Order-in-Original No. 05/CE/Commr/BKJ/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Rohtak]

Sh. Rajender Monga Assistant Manager **……Appellant**
C/o M/s Parle Biscuits Pvt Ltd
36.8 KM, Delhi-Rohtak Road,
Village Sankhol, Bahadurgarh,
Haryana 124507

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Rohtak **……Respondent**
SCO 6 to 8 & 10, Sector 1,
Rohtak, Haryana 124001

AND

Excise Appeal No. 60337 of 2018

[Arising out of Order-in-Appeal No. APPL/CE/101/2017 dated 06.11.2017 passed by the Commissioner (Appeals), Central Excise & Service Tax, Panchkula]

M/s Parle Biscuits Pvt Ltd **……Appellant**
36.8 KM, Delhi-Rohtak Road,
Village Sankhol, Bahadurgarh,
Haryana 124507

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Rohtak ……Respondent
SCO 6 to 8 & 10, Sector 1,
Rohtak, Haryana 124001

APPEARANCE:

Mr. Jatin Mahajan, Advocate for the Appellants

Mr. Goverdhan Dass Bansal, Authorized Representative for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60598-60600/2026

DATE OF HEARING: 15.10.2026
DATE OF DECISION: 13.11.2026

P. ANJANI KUMAR :

These three appeals have been preferred by M/s Parle Biscuits Pvt. Ltd. and its Assistant Manager, Sh. Rajender Monga, against two distinct impugned orders. Appeals bearing No. E/1495/2012 & E/1496/2012 are filed against the impugned Order-in-Original No. 05/CE/Commr/BKJ/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Rohtak. Appeal No. E/60337/2018 is directed against the impugned Order-in-Appeal No. APPL/CE/101/2017 dated 06.11.2017 passed by the Commissioner (Appeals), Central Excise & Service Tax, Panchkula.

2. Brief facts of the case are that M/s Parle Biscuits Pvt. Ltd. ('the appellants') are engaged in the manufacture of biscuits. In the course of manufacture, sugar syrup is prepared inside the factory by mixing sugar with water and a meager quantity of citric acid, and heating the said mixture. The said sugar syrup is used in a semi-hot condition for the manufacture of biscuits. Up to 01.03.2007, the appellants cleared

biscuits on payment of duty and availed of the exemption under Notification No. 67/95-CE. However, w.e.f. 01.03.2007, biscuits cleared in packaged form with a retail sale price not exceeding Rs. 100/- per kg became fully exempted under Notification No. 3/2006-CE. Consequent to this exemption, the appellants stopped paying duty on the intermediate sugar syrup and intimated the same to the jurisdictional Assistant Commissioner of Central Excise vide letter dated 27.06.2008.

2.1 The Department took the view that the exemption under Notification No. 67/95-CE was no longer available to the sugar syrup manufactured and consumed captively by the appellants since the final product (biscuits) was exempted. Accordingly, two Show Cause Notices (SCNs) were issued: the first SCN dated 05.04.2010 demanded duty of Rs. 48,06,318/- for the period from 05.08.2008 to 31.01.2010, and the second SCN dated 19.03.2012 demanded duty of Rs. 25,74,722/- for the period from 03/2011 to 09/2011. Shri Rajender Monga, Assistant Manager (‘co-appellant’), was also called upon to show cause why penalty should not be imposed on him.

2.2 The Revenue's contention regarding the marketability of the sugar syrup is primarily based on an invoice issued by M/s Invert Sugar (I) Pvt. Ltd., through which invert sugar syrup was sold, as well as on CBEC Circular dated 03.07.1996. The proposals in the SCNs were confirmed by the adjudicating authority vide the impugned Order-in-Original dated 30.03.2012. Against the said impugned order, the appellants filed the appeals bearing nos. E/1495/2012 & E/1496/2012.

2.3 Another Show Cause Notice was also issued to the appellants which was adjudicated by the Adjudicating Authority vide Order-in-Original dated 31.03.2017, whereby the duty demand of Rs. 48,06,318/- was confirmed along with an equal penalty. Aggrieved by the said order, the appellant M/s Parle Biscuits Pvt Ltd preferred an appeal before the Commissioner (Appeals), who upheld the same vide the impugned Order-in-Appeal dated 06.11.2017. Hence, Appeal No. E/60337/2018.

3. Shri Jatin Mahajan, learned Counsel for the appellants, submits that the sugar syrup manufactured by the appellants is not marketable. He submits that the sugar syrup is prepared inside the factory according to the appellants' own specifications and formulas, suitable for exclusive use in Parle-branded biscuits. The preparation involves mixing 800 grams of sugar with 200 ml of water per kilogram, along with a meager quantity of citric acid, and heating the mixture. He contends that the syrup is used in a semi-hot condition for the manufacture of biscuits, possesses no shelf life, and is entirely unmarketable. This contention is further supported by certificates issued by dealers of sugar products.

3.1 He further argues that the sugar syrup prepared by the appellants as per their specific requirements is neither available in the market nor capable of being brought to the market for buying and selling. The Revenue's reliance on a single invoice of sugar syrup sold by another manufacturer is completely misplaced, as it was done without verifying whether that product is identical to the sugar syrup prepared by the appellants, and without even providing a copy of the

said invoice to them. Since the Revenue has failed to adduce any evidence to substantiate that the sugar syrup prepared by the appellants has any capability of being bought and sold, the demand of duty treating the same as marketable is wholly unsustainable.

3.2 The learned Counsel further submits that the issue is no longer *res integra* and has been squarely decided by the Tribunal in the case of *Rishi Bakers v. CCE, 2015 (328) E.L.T. 634 (Tri.),* which involved one of the job workers of the appellant. In that case, the Tribunal held that the marketability of sugar syrup prepared by a particular manufacturer cannot be presumed on the basis of the marketability of similar goods manufactured under different conditions by another manufacturer, unless it is established that both products are identical. The Tribunal, in the said case, further held that the demand is not sustainable as the Department failed to conduct any chemical test to ascertain the fructose content in the product, and no such findings were recorded in the orders of the lower authorities. In this regard, the learned Counsel also places reliance on the following judgments:

- *Moti Laminates Pvt. Ltd. v. CCE, 1995 (76) E.L.T. 241 (S.C.)*
- *CCE v. Metro Tyres Ltd., 2005 (181) E.L.T. 176 (S.C.)*
- *Hindustan Zinc Ltd. v. CCE, 2005 (181) E.L.T. 170 (S.C.)*
- *Gujarat Narmada Valley Fertilizers Co. Ltd. v. CCE, 2005 (184) E.L.T. 128 (S.C.)*
- *Board of Trustees of Port of Bombay v. CCE, 2007 (216) E.L.T. 513 (S.C.)*
- *Cipla Ltd. v. CCE, 2008 (225) E.L.T. 403 (S.C.)*
- *Bata India Ltd. v. CCE, 2010 (252) E.L.T. 492 (S.C.)*
- *CCE v. Parle Bisleri Pvt. Ltd., 2015-TIOL-228-SC-CX*
- *Kanti Beverages Pvt. Ltd. v. CCE, 2016-TIOL-2035-CESTAT-AHM*
- *Bhagwati Foods Pvt. Ltd. v. CCE, 2016-TIOL-2499-CESTAT-ALL*

3.3. The learned Counsel further submits that the sugar syrup in dispute is not classifiable under Tariff Item 1702 90 90, as its fructose content is less than 50%, which stands evidenced by the test certificate issued by Shriram Institute for Industrial Research. The Department has failed to adduce any evidence to negate this claim. He further submits that the exemption under Notification No. 67/95-CE dated 16.03.1995 is fully admissible since the obligations under Rule 6 of the CENVAT Credit Rules, 2004 ('CCR, 2004') have been duly discharged. The appellants have not availed of any input tax credit on the inputs used for preparing the sugar syrup. Therefore, in terms of clause (vi) of the proviso to Notification No. 67/95-CE, even if the final product is exempt, the intermediate product remains eligible for exemption provided the manufacturer complies with the requirements of Rule 6 of the CCR, 2004. To support this contention, he places reliance on the following decisions:

- *Godavari Sugar Mills Ltd. v. CCE, 2007 (212) E.L.T. 234 (Tri.)*
- *CCE v. Lanco Industries Ltd., 2008 (227) E.L.T. 395 (Tri.)*
- *Sakthi Sugars. Ltd. v. CCE, 2008 (230) E.L.T. 676 (Tri.)*
- *Kothari Sugars & Chemicals Ltd. v. CCE, 2010-TIOL-148-CESTAT-MAD*
- *CCE v. Ambuja Cements Ltd., 2015-TIOL-321-SC-CX*
- *Rajkot Commissionerate Trade Notice No. 56/2001 dated 21.06.2001*

3.4 The learned Counsel further submits that merely because the appellants paid duty on the intermediate products during the period from March 2007 to June 2008, they cannot be estopped or barred from claiming the benefit of the exemption later, as there is no estoppel against the law. To substantiate this principle, he places reliance on the following judgments:

- *Lili Foam Industries v. CCE, 1990 (46) E.L.T. 462 (Tri.)*
- *Decora Ceramics Pvt. Ltd. v. CCE, 1998 (100) E.L.T. 297 (Tri.)*
- *Asian Peroxides Ltd. v. CCE, 2003 (155) E.L.T. 431 (S.C.)*
- *Metlex (I) Pvt. Ltd. v. CCE, 2004 (165) E.L.T. 129 (S.C.)*
- *CCE v. Bonanza Engineering & Chemical Pvt. Ltd., 2012 (277) E.L.T. 145 (S.C.)*

3.5 The learned Counsel submits that the penalty imposed under Rule 25 of the Central Excise Rules, 2002, without specifying the exact sub-rule, is legally unsustainable in view of the judgment in the case of *CCE v. Amrit Foods, 2003 (153) E.L.T. 369 (Tri.-Del.)*, which was upheld by the Hon'ble Supreme Court as reported in *Amrit Foods v. CCE, 2005 (190) E.L.T. 433 (S.C.).* He contends that since the sugar syrup, based on the physics and facts of the case, is not liable to duty, the confiscation of goods and the imposition of a fine in lieu of confiscation are wholly unsustainable. He further argues that the appellants have not contravened any provisions of the Central Excise Act or the Rules made thereunder. As there is no suppression of facts with an intent to evade payment of duty, the question of invoking the extended period of limitation does not arise, and consequently, no penalty under Section 11AC is imposable.

4. On the other hand, Shri Goverdhan Dass Bansal, the learned Authorized Representative for the Respondent-Revenue, submits that the appellants manufactured inverted sugar syrup, which was captively consumed by them for the manufacture of their final product, i.e., biscuits. Up to 02.05.2007, the appellants were paying the appropriate Central Excise duty on their final product and were consequently availing of the exemption on captively consumed

inverted sugar syrup under Notification No. 67/95-CE dated 16.03.1995. With effect from 03.05.2007, the appellants started availing of the exemption under Notification No. 22/2007-CE dated 03.05.2007, which exempted biscuits having a Retail Sale Price ('RSP') up to Rs. 100/- per kg. As the final product became exempted from Central Excise duty, the appellants began paying duty on the intermediate product, i.e., inverted sugar syrup, from 03.05.2007 until 05.08.2008.

5. Subsequently, vide letter dated 05.08.2008, the appellants intimated to the Department that the inverted sugar syrup manufactured at the intermediate stage is not excisable on the ground that the same is not marketable as such, since it is prepared using a specific formula of ingredients tailored exclusively for use in their biscuits. Consequent to this, the appellants stopped paying duty on inverted sugar syrup with effect from 05.08.2008. Furthermore, the appellants vide letter dated 15.12.2009 submitted that they had previously filed a classification declaration dated 08.12.1998 under Rule 173B of the erstwhile Central Excise Rules, 1944, classifying the said product under Chapter/Heading/Sub-heading No. 1702.30 of the Central Excise Tariff Act, 1985. He submits that the appellants' arguments are that – (i) Inverted sugar syrup is a non-marketable product and is not known to the market; (ii) The Department has failed to satisfy the test of marketability of the said syrup, and therefore, the levy of duty on the same is unsustainable; (iii) CBEC Circular No. 780/13/2004-CX dated 12.03.2004, alongside the judgments of the Hon'ble Supreme Court in *Hindustan Zinc Ltd.*

[2005 (181) E.L.T. 170 (S.C.)] and *FGP Ltd. [2004 (168) E.L.T. 289 (S.C.)]*, support their contentions.

6. The learned Authorized Representative for the Revenue rebuts the arguments of the appellants as follows:

6.1 He contends that it is crucial to note that the appellants paid Central Excise duty on the liquid inverted sugar syrup manufactured and captively consumed by them during the period from 03.05.2007 (the date when their final product became exempted) to 05.08.2008. Furthermore, it is on record that the appellants had filed a classification declaration for liquid inverted sugar syrup under the erstwhile Rule 173B of the Central Excise Rules, 1944, explicitly admitting that the same is an excisable product. He relies on the Board's Circular No. 226/60/96-CX dated 03.07.1996, issued on the basis of the opinion of the Central Revenue Control Laboratory ('CRCL'), which indicates that such sugar solutions containing citric acid possess a stable shelf life.

6.2 He further submits that although at the stage of the Stay Order in this case, the Department had not placed on record any test report indicating added preservatives or a sugar content exceeding 65%, and the report produced by the appellants showed a fructose content much lower than 65%, the private test certificate No. 000186319 dated 03.11.2010 submitted by the appellants cannot be given cognizance. This is because the sample tested by the Shriram Institute for Industrial Research was drawn by the appellants themselves, and the sampling was not carried out by the said institute. Conversely, the Department has now placed on record an

official test report by the CRCL, where sampling was conducted by the Department in the presence of the appellants' representative. This CRCL report clearly establishes that the invert sugar content in the said product is 79.9% by weight and that it contains citric acid. Therefore, in view of the Board's Circular dated 03.07.1996, the product does not suffer from shelf-life issues and satisfies the test of marketability. He adds that Board's Circular No. 780/13/2004-CX dated 12.03.2004, relied upon by the appellants, cannot be read in isolation and must be read in continuity with the earlier Circular dated 03.07.1996. Consequently, the Commissioner has correctly based his findings on these established principles.

6.3 The learned Authorized Representative further argues that the appellants' claim regarding the syrup being used in a continuous process is factually incorrect, as by their own averment, the syrup is stored prior to use. He submits that a simple web search reveals that liquid sugar or invert sugar is readily available in the market for use in biscuits and bakery items, possessing a shelf life of up to one year. A screenshot from the webpage of M/s Rahul Sugar Products, Ghaziabad, placed on record, demonstrates that inverted sugar syrup is actively marketed. Therefore, the appellants' reliance on the judgments of the Hon’ble Supreme Court in *Hindustan Zinc Ltd.* (supra) and *FGP Ltd.* (supra) is entirely misplaced. Instead, he argues that the decision of the Hon’ble Supreme Court in the case of *CCE v. Nicholas Piramal India Ltd. [2010 (260) E.L.T. 338 (S.C.)]* is squarely applicable. The principles laid down therein dictate that intermediate products, even if captively consumed and not actually sold, are liable to Central Excise duty if they satisfy the dual tests of manufacture

and marketability. Marketability is a question of fact to be determined in each individual case. If a product is commercially known and capable of being marketed, the mere fact that the manufacturer chooses not to sell it does not mean it lacks marketability; furthermore, a short shelf life cannot be equated with an absolute lack of shelf life and does not *ipso facto* mean the product cannot be marketed. He concludes by stating that the marketability of sugar syrup has already been decided against the assessees in the cases of *Cadbury India Ltd. v. CCE*, *1998 (104) E.L.T. 457 (Tri.)* and *Pepsico India Holdings Pvt. Ltd. v. CCE*, *2009 (245) E.L.T. 707 (Tri.-Chennai)*.

7. The learned Counsel for the appellants, vide his additional written submissions, has provided extracts from various websites containing information on the definition and composition of invert sugar. He quotes from the website 'PubChem' to submit that:

> *"Invert sugar is obtained from sugarcane when it is treated with dilute acid or with the invertase enzyme. It is formed by equal amounts of glucose and fructose. It differentiates from sugarcane in the rotation of polarized light, which in the case of invert sugar is to the left (laevorotatory). Invert sugar has been FDA approved since 1988 as a Generally Recognized as Safe (GRAS) substance."*

He further relies on the 'DrugBank' database, which defines invert sugar as:

> *"A mixture of approximately 50% dextrose & 50% levulose obtained by acid hydrolysis of cane sugar."*

7.1 The learned Counsel submits that the Department relies heavily upon the report of the Chemical Examiner of CRCL, which was based on samples of sugar syrup drawn from the appellants' premises, certifying that the product consists of 79% invert sugar. The adjudicating authority concluded on the basis of the said report that the product of the appellants is "invert sugar". However, no chemical tests were conducted to determine the actual content of fructose in the sugar syrup prepared by the appellants. Furthermore, the test report itself explicitly mentions that *"it is not possible to determine the percentage of individual constituents and shelf life of the sample by this laboratory."* He contends that in light of the above explicit limitation, and given the complete absence of tests establishing the fructose content, the said test report cannot form the legal basis to conclude that the disputed product is marketable, or that it is classifiable under Tariff Item 1702 90 90.

7.2 The learned Counsel further submits that, in any case, the learned Authorized Representative's argument that the product under dispute is "inverted sugar" and not "sugar syrup", is factually and legally unsustainable. He emphasizes that all the Show Cause Notices, Orders-in-Original, and Orders-in-Appeal, as well as the submissions made by the appellants in their replies to the SCNs and appeals before the First Appellate Authority and before this Tribunal, have consistently treated and described the disputed product as "sugar syrup" and not "invert sugar". He reiterates that, regardless of the nomenclature, the disputed sugar syrup remains fully exempt from duty by virtue of Notification No. 67/95-CE, as the appellants have duly discharged their statutory obligations by either reversing or

not availing of the proportionate CENVAT credit under Rule 6 of the CCR, 2004; this specific plea has been raised consistently by the appellants at every stage, including in their replies to the SCNs, in OIOs, in appeals etc.

7.3 The learned Counsel further submits that the HSN Explanatory Notes under Chapter 17 (at page IV-1702-2) clearly distinguish invert sugar from ordinary sugar syrup. The relevant portion is reproduced below:

> *"Invert sugar, the main constituent of natural honey. It is usually prepared commercially by the hydrolysis of refined sucrose solutions and consists of equal proportions by weight of Glucose and Fructose. It may be presented in solid form or as a viscous syrup (See Part(B)). It is used in pharmacy, bread making, in the manufacture of fruit preserves and artificial honey and in the brewing Industry."*

7.4 The learned Counsel further submits that this Hon'ble Tribunal has consistently held that sugar syrup captively prepared and consumed in the manufacture of biscuits is not marketable. He emphasizes that this view has been upheld in the cases of various similarly circumstanced assessees who, like the present appellants, prepare sugar syrup within their factories for exclusive captive use in the manufacture of '*Parle'* branded biscuits. In addition to the various judgments cited supra, the learned Counsel also places reliance on the recent decision of the Hyderabad Bench of this Tribunal in the case of *M/s Sumo Foods Pvt Ltd v. CCE,* passed vide *Final Order No. A/30259-30260/2026 dated 04.05.2026*.

8. Heard both sides and perused the records of the case.

9. We note that the short issue involved in this case is whether the sugar syrup manufactured and consumed captively by the appellants in the manufacture of biscuits is liable to Central Excise duty, and consequently, whether the benefit of exemption under Notification No. 67/95-CE is admissible to them. The case of the appellants is that the issue is no longer *res integra*, having been decided in their favour by various Benches of this Tribunal in respect of their own job workers and contractors. The appellants also contend that the intermediate product is not classifiable under Tariff Item 1702 90 90, lacks shelf life, and is entirely unmarketable. They further argue that since they have either not availed of CENVAT credit or have duly reversed the CENVAT credit availed on inputs used in the manufacture of the intermediate product, the exemption remains fully applicable to them. On the other hand, it is the case of the Department that, in the instant matter, an official test report has been obtained from the CRCL confirming the percentage of ingredients. The Revenue argues that the appellants' reliance on the case of *Rishi Bakers* (supra) and other judgments is inapplicable to the unique facts of the present case. The Revenue also contends that the intermediate sugar syrup is highly marketable, as evidenced by the websites of various manufacturers who manufacture and sell such products, and that the impugned item is appropriately classifiable under Tariff Heading 1702 90 90. The Revenue further contends that it is the marketability of the product rather than the actual marketing of the product which is relevant for the levy of excise duty.

10. We find that the Revenue is of the opinion that similar products are available and sold in the open market, however, the Revenue has failed to produce any evidence comparing the chemical composition of the said referral market products with that of the intermediate product manufactured by the appellants. In the absence of such a comparative analysis, the marketability of the specific intermediate product in question cannot be presumed or held to be established. We further note that the Chemical Examiner of the CRCL tested a representative sample of the impugned goods and recorded the findings as under:

> *"The sample is light straw-colored thick liquid. It is mainly composed of inverted sugar, sucrose and water having following contents –*
>
> *Inverted sugar – 79.9% wt.*
> *Sucrose content – 8.3% wt.*
> *Acidity as citric acid monohydrate – 0.31% wt."*

11. We note that the learned Counsel for the appellants has submitted that the Shriram Institute for Industrial Research has certified the fructose content in their product to be 31%. He argues that unless the fructose percentage exceeds 50% by weight, the product cannot be classified under Tariff Heading 1702 90 90. He further submits that even going by the analysis report given by the Chemical Examiner of the CRCL, the total invert sugar content is 79.9% by weight. A reference to the standard technical literature reveals that invert sugar consists of equal percentages of fructose and glucose. In the instant case, since the total invert sugar content is 79.9% by weight, the fructose component can in no way exceed approximately 40% by weight. Therefore, the classification adopted

by the Revenue is patently incorrect. We find substantial merit in the arguments advanced by the appellants. We note that the Explanatory Notes to the HSN for Heading 17.02, under Part (A)(2) relating to "Other Sugars", clarify as under:

> *"Invert sugar, the main constituent of natural honey. It is usually prepared commercially by the hydrolysis of refined sucrose solutions and consists of equal proportions by weight of Glucose and Fructose. It may be presented in solid form or as a viscous syrup (See Part(B)). It is used in pharmacy, bread making, in the manufacture of fruit preserves and artificial honey and in the brewing Industry."*

12. In view of the above, we are not in a position to accept the argument of the Revenue that the impugned intermediate product is classifiable under Central Excise Tariff Heading 1702 90 90. Moreover, the report issued by the CRCL fails to specify the exact percentage of fructose, which is the determinative factor for the classification of invert sugar. Consequently, the contention of the Revenue based on the CRCL report falls flat. Furthermore, the Revenue has not contradicted the specific submission of the appellants that they have not availed of any CENVAT credit, or have duly reversed the credit, if any, in terms of Rule 6 of the CCR, 2004. Therefore, the intermediate product manufactured and captively consumed by the appellants is fully eligible for the exemption under Notification No. 67/95-CE dated 16.03.1995. We further observe that this Tribunal has consistently held that sugar syrup manufactured as an intermediate product and captively consumed in the manufacture of the final product, i.e., biscuits, is eligible for the benefit of the said exemption notification.

13. Further, we also find that the argument of the Revenue to the effect that the appellants had been paying Central Excise duty on the sugar syrup during the period up to 02.05.2007 and had thus accepted its dutiability, is legally untenable. It is a well-settled principle of law that the principle of estoppel does not operate against the statute in taxation matters. The appellants, as taxpayers, are fully within their rights to discontinue any incorrect practice that was followed by them earlier. They cannot be expected to perpetuate an error, if any, and such past compliance cannot form a valid legal ground for confirming a duty liability that is otherwise not sustainable under the law. We note that this Tribunal has already dealt with this specific issue, alongside the primary issue of the dutiability of captively consumed intermediate sugar syrup, in the case of *Rishi Bakers* (supra). The relevant findings of the Tribunal on this aspect are extracted in the succeeding paragraphs.

14. We find that the Principal Bench of this Tribunal in the case of *Rishi Bakers*, vide Final Order No. A/50759-50764/2015-EX(DB) dated 03.03.2015, 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 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. v. 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 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 1702 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 state. In these cases, the appellant's plea from the very beginning has been that the fructose sugar content is less than 50% 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. v. 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. v. 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. v. 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. Dhampur 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°) and the same is a mixture of glucose (with specific rotation of +52.7°) and fructose (with specific rotation of - 92°), with net specific rotation of -

19.7°. The process of hydrolysis of cane sugar (which is dextrorotatory i.e. with rotation of + 66.5°) is also called inversion, as the mixture of glucose and fructose formed by this process is levorotatory with sp. Rotation of - 19.7° 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. v. CCE & Cus. (supra), Nicholas Piramal India Ltd. v. CCE, Mumbai (supra) and Medley Pharmaceuticals Ltd. v. 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."

15. We find that the ratio laid down in the above case has also been followed by a Coordinate Bench of this Tribunal at Hyderabad in the case of *M/s Sumo Foods Pvt Ltd*, vide Final Order No. A/30259-30260/2026 dated 04.05.2026. Relevant findings of the Hyderabad bench are extracted herein below:

"**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, ongoing 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 alleges 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."

16. Further, we also find that in the case of the appellants themselves, the Principal Bench of this Tribunal, vide Final Order No. 58020-58023/2017 dated 20.11.2017, has already decided the very same issue in favour of the appellants.

17. In view of our discussion above, we are of the considered opinion that the impugned orders are not sustainable and are liable to be set aside. Accordingly, we set aside the impugned orders and allow the appeals with consequential relief, if any, in accordance with the law.

(Order pronounced in the open court on 13.11.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi