IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

Revenue's APPEAL Nos. E/1881/2011, 1482-1493/2012-EX[DB] &
Assessees' APPEAL Nos. E/524, 1679-1680/2012, 56543/2013, 53149/2014-EX[DB]

Sr. No.	Appeal Nos.	Appellants	Respondents	Impugned Orders
1.	E/1881/2011-EX[DB]	Commissioner of Customs & Central Excise, Meerut-II	M/s B.L. Agro Oils Ltd.	O-I-A No. 79-CE/MRT-II/2011 dated 30.03.2011
2.	E/524/2012-EX[DB]	M/s J.V.L. Agro Industrial Ltd.	Commissioner of Central Excise, Allahabad	O-I-A No. 107/CE/ALLD/2011 dated 25.07.2011
3.	E/1482/2012-EX[DB]	Commissioner, Customs & Central Excise, Kanpur	M/s Mantora Oil Products Ltd.	O-I-A No. 52 to 63-CE/APPL/KNP/2012 dated 29.02.2012
4.	E/1483/2012-EX[DB]	Commissioner, Customs & Central Excise, Kanpur	Shri Rahul Gupta, Director	O-I-A No. 52 to 63-CE/APPL/KNP/2012 dated 29.02.2012
5.	E/1484/2012-EX[DB]	Commissioner, Customs & Central Excise, Kanpur	M/s Mantora Agro Industries Pvt. Ltd.	O-I-A No. 52 to 63-CE/APPL/KNP/2012 dated 29.02.2012
6.	E/1485/2012-EX[DB]	Commissioner, Customs & Central Excise, Kanpur	Shri. Siddartha Gupta, Director	O-I-A No. 52 to 63-CE/APPL/KNP/2012 dated 29.02.2012
7.	E/1486/2012-EX[DB]	Commissioner, Customs & Central Excise, Kanpur	M/s Kanpur Edible (P) Ltd.	O-I-A No. 52 to 63-CE/APPL/KNP/2012 dated 29.02.2012
8.	E/1487/2012-EX[DB]	Commissioner, Customs & Central Excise, Kanpur	Shri Manoj Gupta, Director	O-I-A No. 52 to 63-CE/APPL/KNP/2012 dated 29.02.2012
9.	E/1488/2012-EX[DB]	Commissioner, Customs & Central Excise, Kanpur	M/s Vaibhav Edibles (P) Ltd.	O-I-A No. 52 to 63-CE/APPL/KNP/2012 dated 29.02.2012
10.	E/1489/2012-EX[DB]	Commissioner, Customs & Central Excise, Kanpur	Shri Akhil Gupta, Director	O-I-A No. 52 to 63-CE/APPL/KNP/2012 dated 29.02.2012
11.	E/1490/2012-EX[DB]	Commissioner, Customs & Central Excise, Kanpur	M/s Dinesh Oil Ltd.	O-I-A No. 52 to 63-CE/APPL/KNP/2012 dated 29.02.2012
12.	E/1491/2012-EX[DB]	Commissioner, Customs & Central Excise, Kanpur	Shri Dinesh Arora, M.D.	O-I-A No. 52 to 63-CE/APPL/KNP/2012 dated 29.02.2012
13.	E/1492/2012-	Commissioner,	M/s R.P.	O-I-A No. 52 to 63-

	EX[DB]	Customs & Central Excise, Kanpur	Edible Oils Ltd.	CE/APPL/KNP/2012 dated 29.02.2012
14.	E/1493/2012-EX[DB]	Commissioner, Customs & Central Excise, Kanpur	Shri Rakesh Agarwal, Director	O-I-A No. 52 to 63-CE/APPL/KNP/2012 dated 29.02.2012
15.	E/1679/2012-EX[DB]	M/s J.V.L. Agro Industries Ltd	Commissioner of Central Excise, Allahabad	O-I-O No. (MP-156/2010 & 39/2011) 08 & 09 of 2012 dated 30.03.2012
16.	E/1680/2012-EX[DB]	M/s J.V.L. Agro Industries Ltd.	Commissioner of Central Excise, Allahabad	O-I-O No. (MP-156/2010 & 39/2011) 08 & 09 of 2012 dated 30.03.2012
17.	E/56543/2013-EX[DB]	M/s Shyam Vanaspati Oils Ltd.	Commissioner, Central Excise, Lucknow	O-I-A No. 427-CE/LKO/2012 dated 28.09.2012
18.	E/53149/2014-EX[DB]	JVL Agro Industries Ltd.	CCE, Customs & ST, Allahabad	O-I-O No. MP(Dem. 67/2012 & 42/2013) 03 & 4 of 2014 dated 14.02.2014

Appearance:

Shri Sandeep Kumar Singh (Dy. Commr.) AR, Shri Gyanendra Kumar Tripathi (AC) AR & Shri Pawan Kumar Singh (Supdt.) AR **for Revenue**

Shri Pranay Mittal (Advocate) (in Appeal No. E/524, 1482-1493/2012, 56543/2013)
Request for adjournment (in Appeal Nos. E/1679-1680/2012, 53149/2014)
for Assessee

CORAM:

Hon’ble Mr. Anil Choudhary, Member (Judicial)
Hon’ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 27/02/2018
Date of Decision : 27/02/2018

FINAL ORDER NOs. 70692-70709/2018

Per: Anil Choudhary

The issue in these appeals is whether the appellants/respondents manufactures, manufacturing Refined Vegetable Oil which is exempted under Notification, whether they are entitled to exemption on the items being Fatty acids, Wax, Gums and Spent earth under Notification No. 89/1995-CE dated 18.05.1995.

2. Heard the parties.

3. That similar issue was considered by a Larger Bench of this Tribunal in a batch of appeals being Excise Appeals No. 653, 3585 of 2012 and others, vide Interim Order No. 8-11/2018 dated 30 January, 2018, the Larger Bench gave its opinion as follows:-

"9. We have heard both the sides and perused the appeal record to examine the reference made by the Division Bench. Since the appellants submitted on the excisability itself the first point for decision is the excisability of the products, in question. The appellants strongly contended that even before examining the admissibility of exemption under Notification 89/1995-CE, the point to be decided is the excisability of the product, in question. It is the case of the appellant that if it can be established that these goods are not manufactured goods then the question of levy itself will not arise. It is contended that the product, in question, are unwanted/inevitable waste. The value realized by the appellants on such unintended waste by sale, itself is not a criteria to decide the excisability. The Hon'ble Supreme Court in ***CCE vs. Indian Aluminium Company – 2006 (203) E.L.T. 3 (S.C.)*** *held zinc dross and*

skimming arising during the course of manufacture of metal cannot be subjected to excise levy only because it may have some saleable value, observing that the term "manufacture implies a change; every change, however, is not a manufacture". Every change of an article may be the result of treatment, labour and manipulation. The manufacture would imply something more. There must be a transformation; a new and different article must emerge having a descriptive name, character or use ***(Delhi Cloth and General Mills Compay Ltd. – AIR 63 SC 791).*** *The Apex court categorically held that dross do not answers the description of "waste and scrap".*

10. In view of the ratio adopted by the Apex Court while arriving at the above decisions, the point for consideration in the present dispute is the gums, waxes and fatty acid that emerge as a by-product can be considered as products arising out of a manufacturing process. The appellants are engaged in converting crude rice bran oil into refined rice bran oil. In effect the process undertaken by them are towards this intended final product. For producing refined rice bran oil, the gums and waxes available in the crude rice bran oil are to be removed by degumming and de-waxing. Thereafter by a process of deacidification/de-odourisation, by distillation the refined oil is obtained. In this final process fatty acid distillate (fatty acid with odour) is obtained as a waste. As can be seen the gums, waxes and fatty acid distillate are emerging due to *removal/refining process of crude rice bran oil. As already noted the process is to obtain refined rice bran oil by removing these unwanted products alongwith spent earth, which when present makes the oil as crude refined oil.*

11. The thrust of the arguments by the Revenue is that when a product is capable of being sold for a significant consideration the same cannot be considered as waste. We are unable to accept such summary presumption. Admittedly, in chemical and metallurgical industry when the raw materials are processed with an intended purpose of manufacturing certain final products by a chemical reaction, refining, melting etc. multiple products will result. These products either emerged in the final stage or any of the intermediating stages also. The point for consideration is whether these are to be considered as manufactured goods for excise levy based on the statutory definition for manufacture or should be considered as manufactured goods based on the likely value they may command while selling. We are clear that the value that a product may or may not fetch, cannot be a determinative factor to decide whether the same is a manufactured final product/by product or a waste/refuse arising during the course of manufacture of final products. This much is clear from the ratio of the Apex Court decision in ***Indian Aluminium Co.*** *(supra). While no general guidelines can be laid down to decide when a product will be treated as a waste or a by product, in the* *present set of facts, the products under consideration are clearly not in the nature of by products emerging during the course of manufacture. The process of manufacturing refined vegetable oil is essentially by removing the unwanted materials that were present in the crude vegetable oil so that a refined vegetable oil can be obtained. In this process of refining, the unwanted materials are removed. Hence, we are of the considered view that the removal of unwanted materials resulting in products like gums, waxes and fatty acid with odour, cannot be called as a process of manufacture of these gums, waxes and fatty acid with odour. The process of manufacture is for refined rice bran oil. As such, we note that these incidental products are nothing but waste arising during course of refining of rice bran oil and applying the ratio of Apex Court, as discussed above, these cannot be considered as manufactured excisable goods. Noting that the reference is to decide whether these are to be treated as waste for the purpose of exemption Notification 89/95-CE, we note though the excisability of the product itself is seriously in dispute as per the opinion expressed by us, as above, these cannot be considered as anything other than waste and as such will be covered by the exemption Notification No.89/95-CE. This has been pleaded as an alternate argument by the appellant/assessee also.*

12. As such in view of the above discussion and finding, we note that the appellant/assessee are eligible for exemption under the said notification."

4. Accordingly following the opinion expressed by the Larger Bench, we hold that the manufacturer-assessees herein are entitled to exemption under the Notification No. 89/1995-CE dated 18.05.1995 on their waste generated in the course of manufacture such as Fatty acids, Wax, Gums and Spent earth.

5. Accordingly appeals filed by the assessees are allowed.

6. Appeals filed by the Revenue are dismissed.

7. Assessee-appellants/respondents shall be entitled to consequential benefit in accordance with law.

(Dictated and pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Anil Choudhary)**
Member (Technical)	**Member (Judicial)**

Ankit