

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No.E/70013,70338,70675/2016-EX[DB]**

S.No.	APPEAL No.	APPELLANTS	RESPONDENTS	IMPUGNED ORDER No.
1	E/70013/2016-EX[DB]	M/s Merino Industries Ltd.	Commissioner, Central Excise & Service Tax, Hapur	C.No. V-30-TECH-HPR-MERINO-27-2015 dated-26.10.2015 passed by Commissioner, Customs, Central Excise & Service Tax, Hapur
2.	E/70338/2016-EX[DB]	M/s Merino Industries Ltd.	Commissioner, Central Excise, Hapur	O-I-O No. 16-HAPUR-2015-16 dated 28.12.2015 passed by Commissioner, Customs, Central Excise & Service Tax, Hapur
3.	E/70675/2016-EX[DB]	M/s Merino Industries Ltd.	Commissioner, Central Excise, Meerut-I	O-I-A No.HPU-EXCUS-000-APPEALS-I-573-2015-16 dated 17.03.2016 passed by Commissioner, Central Excise, Appeals-I, Meerut

Appearance:

Shri S. Sunil (Adv.)

Shri Mohd Altaf, Assistant Commissioner (AR),

for Appellant
for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing/ Decision : 07/12/2018

FINAL ORDER NO. **72863-72865 / 2018**

Per: Archana Wadhwa

All the three appeals are being disposed of by a common order as the issue involved in all of them is identical.

2. In Appeal No.E/70338/2016-EX[DB], the issue relates to classification dispute of the appellant's final product called 'Potato Flakes'. Whereas the appellants have claimed the classification of the said product falling under Chapter 11052000, which attracts nil rate of duty. Revenue has classified the product under Chapter 20 of the Central Excise Tariff Act, 1985 which attracts rate of basic Central Excise Duty as 5% *ad-valorem*. Accordingly, after initiating proceedings against the appellant, the demand to the tune of Rs.3.39,46,003/- crores stands confirmed against the appellant along with imposition of penalties etc.

Both sides agree that the issue of classification of 'Potato Flakes' stand decided by the Tribunal vide its Final Order No.70806-70807/2017 dated 09.08.2017. It stands held in the said order that the potato flakes are properly classifiable under Tariff Item No.11052000 of the schedule to Central Excise Tariff Act, 1985. The said

order of the Tribunal stands subsequently followed in the appellant's own case vide Final Order No.71027/2018 dated 11.04.2018. Inasmuch as the classification dispute stands finalized in the assessee's own case for the earlier period, by following the above referred decisions of the Tribunal, we set aside the impugned order and allow the said appeal with consequential relief.

2. As regards Appeal No. E/70013/2016-EX[DB], learned advocate submits that during the visit of the officers in the assessee's factory, available material was put under seizure on the above ground of classification only. On approach to the Revenue for provisional release of the said goods, Commissioner imposed stringent conditions including the condition of payment of involved duty by treating the goods as falling under Chapter 20. The appeal is against the said order of the Commissioner for provisional release of the goods.

However, he submit that subsequently they have deposited the amount in terms of the directions and conditions as contained in the said provisional release order passed by the Commissioner and fairly agrees that the said appeal has become in-fructuous, inasmuch as the prayer in the appeal was to dilute the condition for

provisional release. He submits that, inasmuch as the classification stand decided in their favour, now they will approach the Revenue for the consequential benefits.

3. In view of the forgoing, the said appeal is dismissed as in-fructuous.

4. As regards Appeal No.E/70675/2016-EX[DB], learned advocate explains that in terms of the provisional release order passed by the Commissioner, the Assistant Commissioner was directed to quantify the duty required to be deposited by them. Vide the said impugned order, the Assistant Commissioner quantified the duty. The appellant's appeal filed before Commissioner (Appeals) stand rejected. Hence the present appeal.

5. Learned advocate fairly agrees that in the background of entire scenario, the present appeal has also become in-fructuous, inasmuch as on the face of settlement of dispute of classification, they would be entitled to the consequential relief available to them.

6. In view of the forgoing, the said appeal stands also dismissed as in-fructuous. However, we make it clear that the settlement of dispute on the classification in

favour of the assessee would be equally applicable to the present two appeals which have been dismissed for technical reasons of having become in-fructuous.

8. All the three appeals are disposed of in above manner.

(Pronounced & Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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