

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38, MG Marg Civil Lines, Old Red Building, Allahabad-211001
Regional Branch, Allahabad

Dated: 04/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71035/2016-EX[DB] dated 27/10/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.


 Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/650/2008	SWASTIK SOLVENT PRODUCT (I) LTD. THE GENERAL MANAGER, VILL. BHARATPUR, DISTT. RAMPUR.

Name and Address of
Respondent

2		-C.C.E. MEERUT II OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
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Copy To

3 Advocate(s) / Consultant(s):

KAPIL VAISH
2ND FLOOR, PART-A KRISHNA JANKI
PALACE, 35-C, RAMPUR GARDEN,
CIVIL LINES, BAREILLY, UP

4. Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaidhyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxindiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

12 The ICFAI society, 52, Nagarjuna HR, Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. Ltd. (taxmanagementindia.com), PF-19, 1st Floor, Cross River Mall, CBD Ground, Near Karkardooma Court, Delhi-110032

14 C.D.R. 18 Office Copy 16 Guard File


 Asstt. Registrar

873-11-16
ISSUED ON
 SIGN. (RESEARCH SECTION)
 CUSTOMS, EXCISE & SERVICE TAX
 APPELLATE TRIBUNAL
 38, M. G. MARG, ALLEHABAD

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/650/2008-EX[DB]

(Arising out of Order-in-Appeal No. 264-CE/MRT-II/2007 dated 18/12/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Swastik Solvent Product (I) Ltd.

Appellant

Vs.

Commissioner of Central Excise, Meerut-II

Respondent

Appearance:

Shri Kapil Vaish, Chartered Accountant,
Shri Pawan Kumar Singh, Superintendent, (AR)

for Appellant
for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 27/10/2016

FINAL ORDER NO. 71035/2016

Per: Anil Choudhary

The present appeal is filed by the appellant, M/s. Swastik Solvent Product (I) Ltd., against Order in Appeal No. 264-CE/MRT-II/2007 dated 18/12/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II. The issue in this appeal is whether the appellant engaged in the manufacture of Rice Bran Oil & Solvent Extraction Industry and further refined the same to make it edible oil in which process two bye-products/waste products arise, namely, fatty acid & wax. Whether the appellant is entitled to exemption on fatty acid and waxes under Notification No. 115/75-CE dated 30-04-1975.

2. The appellant manufactures Rice Bran Oil from 'Rice Bran' by the solvent extraction process and such Rice Bran Oil is further refined by process of 'Degumming', 'Bleaching', 'Dewaxing' & 'Deodorisation', during which the Fatty Acid (Chapter Heading 382300) & Wax (Chapter Heading 150700) are obtained as the bye-products along with the upgraded 'Rice Bran Oil' as the main product. The appellant claimed exemption under Notification No. 115/75 vide letter dated 25-04-2005 stating that their company being a composite mill having Solvent Extraction Plant as well as refinery, falling under the category of 'Oil Mill & Solvent Extraction Industry' and accordingly as per the Schedule at Serial No. 4 under

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Notification No. 115/75 they are eligible for exemption from the duty leviable thereon.

3 The Show Cause Notice dated 18-04-2006 was issued as it appeared to the Revenue that the appellant does not fulfill the requirement of Notification No. 115/75 for the following reasons:- (i) That the manufacturing unit of the appellant is not an 'Oil Mill Industry & Solvent Extraction Industry' as per the wordings of the notification and instead is only a 'Solvent Extraction Industry'. (ii) That the goods in question namely Fatty Acid & Wax falling under Heading No. 3823000 & 150700 respectively emerged/manufacture after the solvent extraction of Rice Bran Oil when it is subjected to a separate down-stream processes. The Show Cause Notice was adjudicated vide Order-in-Original No. 17/2006 dated 07-03-2007 on contest, and the Adjudicating Authority was pleased to reject the claim of exemption relying on the ruling of this Tribunal in the case of M.P. Dye Chem Industries Vs. Commissioner of Central Excise, Indore - 2000(08) LCX0110 holding that the appellant who neither undertook the extraction of Oil from Oil Seeds nor carried out any solvent extraction technique, hence did not fall in the category of Oil Mill & Solvent Extraction Industry. Accordingly, denying the exemption, the proposed demand of Rs.3,72,411/- as Central Excise duty and Rs.7,449/- as Education Cess was confirmed and also penalty of Rs.2,00,000/- was imposed under Rule 25 of the Central Excise Rules, 2002.



4. Being aggrieved the appellant preferred appeal before Id. Commissioner (Appeals) who was pleased to dismiss the appeal, agreeing with findings of the Adjudicating Authority.

5. The Id. Counsel for the appellant urges that the issue is no longer res-integra and the same have been explained and clarified by Hon'ble Supreme Court in the case of Bombay Oil Industries Ltd. *Versus* Commissioner of Central Excise reported at 1997 (91) E.L.T. 538 (SC) wherein the appellant's goods were manufactured in a Solvent Extraction Plant wherein in Spices, Essential oils & Oleoresins were produced by solvent extraction plant (for use in the food industry for flavouring and colouring). The Revenue in the year 1985 took the view that the appellants were not entitled to the benefit of the said Notification No. 115/75 in that they were not manufacturing vegetable oils as commonly known. The Collector (Appeals) allowed the appellant's appeal. In his view, the Oil industry & the Solvent Extraction Industry, independently and separately would be covered by the said notification which view was reversed by this Tribunal. Further, the said notification exempts goods manufactured in factories covered by the industries specified in the Schedule. Item 4 of the Schedule specifies the 'Oil Mill & Solvent Extraction Industry'. It may be that ordinarily an industry of this nature would have both an Oil Mill & Solvent Extraction Plant, both of which manufacture vegetable oils, but that is no reason, in our view, to place upon the plain words of the

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notification narrower meaning than that to which they plainly lend themselves. The notification exempts goods manufactured in factories of the Oil Mill & Solvent Extraction Industry. The appellant's goods are goods manufactured in a Solvent Extraction Plant and must, on the plain words of the notification, receive the benefit of the exemption that is confers.

6. Accordingly, the Id. Counsel states that in view of the ruling of the Hon'ble Supreme Court, said notification exempts goods manufactured in factories of the Oil Mill & Solvent Extraction Industry. Thus, the appellant prays for allowing the appeal with consequential benefits.

7. The Id. AR relies on the impugned order.

8. Having considered the rival contentions, we find that in view of the law clarified by the Hon'ble Supreme Court both Oil Mill & Solvent Extraction Industry are eligible for exemption under Notification No. 115/75-C.E. dated 30-04-1975. Accordingly, we allow this appeal with consequential benefits and set aside the impugned order.

(Dictated and pronounced in Court)

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रती / Certified True Copy

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सहायक रजिस्ट्रार / Asst. Registrar
सीमा शुल्क, वस्तु एवं सेवा कर
अधीन अधिनियम / (C.E. & S.T.)
38, पृथ्वी नगर, मुम्बई-400001
38, P. N. Nagar, Mumbai-400001