FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 05/12/2017

Appellant as per address in table below

Respondent as per address in table below

**Final Order No. A/71872-71874/2017-EX[DB] dated 09/11/2017**

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/969/2007 | **Shri Om Oils India Pvt Ltd**<br>74/276 Vijaya Bank Building<br>Hasslay Road<br>KANPUR<br>UP |
| 2 | E/970/2007 | **Shri Om Oils India Pvt Ltd**<br>74/276 Vijaya Bank Building<br>Hasslay Road<br>KANPUR<br>UP<br>208001 |
| 3 | E/971/2007 | **Shri Om Oils India Pvt Ltd**<br>74/276 Vijaya Bank Building<br>Hasslay Road<br>KANPUR<br>UP<br>208001 |

| | Name and Address of Respondent |
| --- | --- |
| 4 | C.C.E. & S.T.-Kanpur<br>117/7.,SARVODYA NAGAR,<br>KANPUR,<br>UTTAR PRADESH-208005 |
| 5 | C.C.E. & S.T.-Kanpur<br>117/7.,SARVODYA NAGAR,<br>KANPUR,<br>UTTAR PRADESH-208005 |
| 6 | C.C.E. & S.T.-Kanpur<br>117/7.,SARVODYA NAGAR,<br>KANPUR,<br>UTTAR PRADESH-208005 |

Other Appellants and Respondents as per Annexure

Copy To

7Advocate(s) / Consultant(s):

**R. Santhanam**
**C-3/210, JANAKPURI,**
**NEW DELHI,**
**DELHI**
**110058**

8 Bar Association, CESTAT, Allahabad

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

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

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

18 C.D.R. 19 Office Copy 20 Second Folder Copy 21 Guard File

Asstt. Registrar

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**REGIONAL BENCH : ALLAHABAD**

**COURT No. I**

**APPEAL Nos. E/969-971/2007-EX[DB]**

(Arising out of Order-in-Appeal No. 639-641-CE/APPL/KNP/2006 dated 22/12/2006 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

**Shri Om Oils India Pvt. Ltd.,** **Appellants**

Vs.

**Commissioner of Central Excise & S.T., Kanpur, Respondents**

Appearance:

Request for Adjournment, for Appellants

Shri Sandeep Kumar Singh, (Dy. Commissioner) AR, for Respondent

**CORAM:**

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

Date of Hearing : 09/11/2017
Date of Decision : 09/11/2017

**FINAL ORDER NOs. 71872-71874/2017**

**Per: Anil Choudhary**

The issue involved in these appeals is whether exemption under Notification No.-6/2002-CE dated 01.03.2002 is admissible to the appellant or not.

2. The brief facts are that the appellant is a registered manufacturer of Refind Mahua Oil and Refind Rice Bran Oil and was clearing the goods on payment of duty as leviable under Central Excise Tariff Act, 1985. But, during the period July, 2004 to Oct., 2004, they manufactured

upgraded Mahua Oil and cleared the same at NIL rate of duty under Notification No. 6/2002-CE dated 01.03.2002 as amended. The detail of the period of dispute and date of show cause notice are as follows:-

| Period | Qty. | Duty | Cess | Total | Date of issue of SCN |
|---|---|---|---|---|---|
| June'04 &July'04 | 317735/- | 317735/- | 5035/- | 322770/- | 29.02.05 |
| Aug'04 & Spet'04 | 489650/- | 489650/- | 9793/- | 499443/- | 11.03.05 |
| Oct'04 | 149075/- | 149075/- | 2982/- | 152057/- | 21.04.05 |
| **Total** | **956460/-** | **956460/-** | **17810/-** | **974270/-** | |

The department being of the opinion that Mahua Oil manufactured by the appellant is not exempted from payment of duty, as the fact that the product is 'Upgraded Mahua Oil' has not been proved by the appellant whereas under a catena of judgments of the Apex Court, to avail exemption under a notification, admissibility of the exemption is to be proved by the manufacturer. Accordingly, Show Cause Notices were issued to the appellant proposing disallowance of the exemption, confirming the demands as proposed therein alongwith penalty. The Show Cause Notice was confirmed and also penalties were imposed. Being aggrieved the appellant preferred an appeal before the learned Commissioner's Appeal on the ground that no condition has been imposed under the said notification as amended, for availing exemption from payment of duty. The Revenue Authorities have had knowledge of manufacture of all goods being other than Refind Edible Oil namely upgraded Rice bran Oil as well as upgraded Mahua Oil and the officers were at liberty to draw samples of upgraded Mahua Oil, at the time of the visit in July, 2004 to determine the classification. Only on chemical test, denial of the exemption, as per law settled is bad, and drawing of adverse inferences of intention to evade payment of duty. That adjudicating authority has travelled beyond the scope of Show Cause Notice by confirming the demand on the basis of facts not mentioned in the Show Cause Notice. Although the Revenue Authorities had knowledge of manufacture and clearances of upgraded oil but neither any order for provisional assessment was made nor any sample was drawn for technical test nor initiated any timely action as required, to raise the demand promptly, if not satisfied from the assessment (self) made at NIL rate of duty, in respect of Upgraded Oil. It is not for the manufacturer to prove anything negative as per the settled law once the declaration in monthly returns in form ER-1 has already been filed and without any further facts on record the assessment cannot merely be re-opened on presumptions and assumptions. He has also contended that it was not the obligation of the appellant manufacturer to obtain any lab reports when nothing incriminating was found in relation to Upgraded Rice Bran Oil, so as to re-open the assessment, as the process of manufacture was the same.

3. The learned Commissioner (Appeals) was pleased to reject the appeals agreeing with the finding of the learned Adjudicating Authority.

4. Being aggrieved, the appellant is before this Tribunal. We find that the Order-in-Appeal is a common Order-in-Appeal in all the three appeals accordingly the issue being same the appeals taken up for disposal together.

5. The appellant is absent inspite of notice and filed a time petition which is being rejected, because being a very old appeal. Heard learned AR for the revenue and perused records.

6. Having considered the rival contentions, we find that the Commissioner of Customs & Central Excise, Kanpur vide his clarificatory letter issued to the President of 'U.P. Vanaspati Producer's Association' being letter no. V(30)Tech-III/50/2004/15222 dt. 22.12.2004 in response to the representation by the said association have been pleased to clarify that in terms of the notification 6/2002-CE as amended, general exemption no. 52, under entry sl. No. 244, all goods other than Refind Edible Oil, falling under heading 15.02 or 15.03 are chargeable to Nil rate of duty, while Refind Edible Oil are chargeable to duty at Rs. 1/- per kg. In order to categorise as Refind Edible Oil, fixed Vegetable Oil must confirm to the standards of Refind Vegetable Oil, read with standards for the specified Vegetable Oil as prescribed in Prevention of Food Adulteration Act, 1954, apart from being subjected to processes as specified in the definition of Refind Edible Oil

given under the explanation to the said entry. Since, it is reported by the Assistant Commissioner, Central Excise, Kanpur, that the results of the test report, in respect of the samples of Upgraded Rice Bran Oil drawn from the manufactured stock of some of the Vegetable Oil manufacturing units, as received from chemical examiner, CRCL, New Delhi and HBTI, Kanpur revealed that the Upgraded Rice Bran Oil does not confirm to the standards specifications as prescribed for refind grade (for direct edible consumption). The so called upgraded Rice Bran Oil in question would merit to be categorised as "goods other than refind edible oil" and would attract Nil rate of duty under sl. no. 244A of exemption notification no. 6/2002-CE. Further, so long as the so called Upgraded Rice Bran Oil/ Vegetable Oil manufacturing units does not satisfy the standard speciation for refind edible oil as prescribed under PFA Act, 1954 on the rules made thereunder, the same shall continue to be eligible to exemption under said notification, as falling in the category of "all goods other than refind edible oils". The jurisdictional Central Excise Officers have been advised to draw the samples of the so called 'Upgraded Rice Bran Oil' and get the same chemically tested in order to verify eligibility to exemption and whenever there is any doubt or in the event of any suspected misdeclaration about the correctness of the claim to exemption being availed by any manufacturer.

7. From the perusal of records we found that the revenue has ignored the directions of its Commissioner. There is not a

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single test report on record brought by the revenue so as to certify that the finished product of the appellant is Refind Edible Oil. Accordingly, under the facts and circumstances we find that the Show Cause Notice is only presumptive and accordingly, we hold that the same is not maintainable. Accordingly, all these appeals are allowed and the impugned order is being set aside. The appellant is entitled to consequential benefits, in accordance with law.

(Dictated in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

GS

प्रमाणित प्रति/Certified True Copy
05/01/18
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M.G. MARG ALLAHABAD-211001