

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

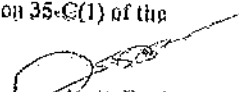
Dated: 05/12/2017

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 74/276 Vijaya Bank Building Hasslay Road KANPUR UP
2	E/970/2007	Shri Om Oils India Pvt Ltd 74/276 Vijaya Bank Building Hasslay Road KANPUR UP 208001
3	E/971/2007	Shri Om Oils India Pvt Ltd 74/276 Vijaya Bank Building Hasslay Road KANPUR UP 208001
		Name and Address of Respondent
4		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
5		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
6		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

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

8 Bar Association, CESTAT, Allahabad

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

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishun 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)

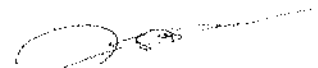
14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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/ABPL/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

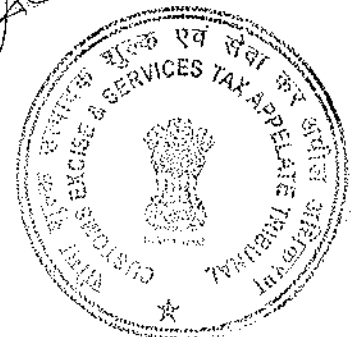
Date of Decision : 09/11/2017

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



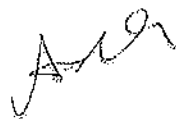
upgraded Mahua Oil and cleared the same at NIL rate of duty under Notification No. 6/2002-CE dated 01.03.2002 as amended. The detail of the period of dispute and date of show cause notice are as follows:-

Period	Qty.	Duty	Cess	Total	Date of issue of SCN
June'04 & July'04	317735/-	317735/-	5035/-	322770/-	29.02.05
Aug'04 & Sep'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

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than Refined 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.

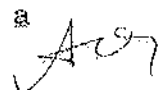


3. The learned Commissioner (Appeals) was pleased to reject the appeals agreeing with the finding of the learned Adjudicating Authority.
4. Being aggrieved, the appellant is before this Tribunal. We find that the Order-in-Appeal is a common Order-in-Appeal in all the three appeals accordingly the issue 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. Vanaspathi 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 Refined Edible Oil, falling under heading 15.02 or 15.03 are chargeable to Nil rate of duty, while Refined Edible Oil are chargeable to duty at Rs. 1/- per kg. In order to categorise as Refined Edible Oil, fixed Vegetable Oil must conform to the standards of Refined 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 Refined Edible Oil

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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 refine grade (for direct edible consumption). The so called upgraded Rice Bran Oil in question would merit to be categorised as "goods other than refine 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 specification for refine 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 refine 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



single test report on record brought by the revenue so as to certify that the finished product of the appellant is Refined 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)

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प्रमाणित प्रति/Certified True Copy

205/01/18
राज्यक वरीकर/Asset Registrar
सीमागाव, जयपूरगुला एन सीआर
ऑनलाइन अधिकारी(C.E.S.T.A.T.)
28, Choudhary, BANGALORE-211001
32 P.C. BANGALORE-211001