CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Excise Appeal No. 25015 of 2013

(Arising out of Order-in-Original No. 19/2012 dt. 31/08/2012 passed by Commissioner Of Central Excise & Service Tax, Mangalore)

Rajshri Packagers Limited,
(Now Adani Wilmar Limited)
Fortune House,
Near Navrangpura Railway Crossing,
Navrangpura,
Ahmedabad – 380009.

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax,
5th Floor, Trade Centre,
Bunts Hostel Road, Mangalore – 3.

Respondent(s)

AND

Excise Appeal No. 25016 of 2013

(Arising out of Order-in-Original No. 19/2012 dt. 31/08/2012 passed by Commissioner Of Central Excise & Service Tax, Mangalore)

Shri Kripakar Varshney, M.D., Rajshri Packagers Limited,
(Now Adani Wilmar Limited)
Fortune House,
Near Navrangpura Railway Crossing,
Navrangpura,
Ahmedabad – 380009.

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax,
5th Floor, Trade Centre,
Bunts Hostel Road, Mangalore – 3.

Respondent(s)

APPEARANCE:

Mr. Jitender Motwani, Advocate for the appellant.
Mr. Dyamappa Airani, Dy. Commissioner (AR) for the respondent.

CORAM:
HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20770-20771 / 2023

Date of Hearing: 09/06/2023
Date of Decision: 09/06/2023

Per : DR. D.M.MISRA

These two appeals are filed against Order-in-Original No.19/2012 dt. 31/08/2012 passed by the Commissioner of Central Excise and Service Tax, Mangalore.

2. Briefly stated the facts of the case are that the appellants were engaged in the manufacture of Refined Palm Stearin (RPS, for short) during the period 25/09/2008 to 31/12/2010 declaring its classification under Chapter heading 1511 90 90 of CETA, 1985. They claimed exemption under Notification No.3/2006-CE dt. 01/03/2006 as amended. The Revenue, proposing its classification under Chapter heading 3823 11 12 of CETA, 1985, demanded differential duty amounting to Rs.2,47,14,105/- by issuing show-cause-cum-demand notice on 26/03/2012. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. The learned advocate for the appellant fairly submitted that initially the said product viz. RPS was held to be classifiable under Chapter sub-heading 1511 90 90 based on the Board's Circular No.81/2002 dt. 03/12/2002 by this Tribunal in the case of ***Jocil Ltd. Vs. CCE, Cus & ST, Vishakapatnam*** [2009(244) ELT 69 (Tri. Bang.)]. The said order of the Tribunal was challenged by the Department before the Hon'ble Supreme Court and the Hon'ble Supreme Court by its judgment dt. 15/12/2010 reported as ***CCE, C&ST, Vishakapatnam Vs. JOCIL Limited*** [2011(263) ELT 9] held that RPS was classifiable under Chapter sub-heading 3823 11 12 and consequent to the judgment of the Hon'ble Supreme Court, the Circular No.81/2002 was withdrawn by Circular No.31/2011-Cus dt. 26/07/2011. He fairly submitted that on merit, the issue has been settled against the appellant; however, his contention is that confirmation of demand invoking extended period of limitation is unsustainable in law. He submitted that by following the Circular No.81/2022, the appellant classified their product which has been upheld by the Tribunal in JOCIL's case. He has further submitted that there were 4 appeals filed before this Tribunal; however, due to reorganization of the jurisdiction of Tribunal, two connected appeals bearing No.E/25044/2013 and E/20553/2014 had been transferred to the jurisdiction of CESTAT, Hyderabad Bench and the present two appeals remained pending before this Bench. He submitted that the Hyderabad Bench of the Tribunal dropped the demand for extended period. Hence, the extended period in the present two appeals also cannot be sustained as no fact was

suppressed from the knowledge of the Department or misdeclared; the classification of RPS and availment of benefit of notification was clearly and regularly mentioned in the ER1 returns filed from time to time with the Department.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner.

5. Heard both sides and perused records. We find that the issue revolves in a very narrow compass inasmuch as the appellant has not disputed that the correct classification of the manufactured goods viz. Refined Palm Stearin (RPS) has been finally decided by the Hon'ble Supreme Court in JOCIL Ltd.'s case (supra); however they challenged the invocation of larger period of limitation. It is also a fact that involving similar issues, two more appeals were filed before this Tribunal being transferred to the Hyderabad Bench and had been decided by the Tribunal setting aside the demand for extended period vide Final Order No.A/31515-31516/2017 dt. 08/09/2017. Para 7 of the said decision is reproduced hereunder:-

> *7. Firstly, it is undisputed that appellants were indicating clearances of palm stearin on nil rate of duty by availing benefit of Notification No.03/2006. These clearances are indicated in the monthly returns filed by the appellant; this is an evident from the fact that the queries raised by the Audit Department on 03.12.2012 that emanate from the scrutiny of records of monthly returns. It would mean that appellant had in fact recorded the clearances and indicated the same*

in their monthly returns as to availment of benefit of notification.

6. Recording the above said facts, the Tribunal set aside the demand confirmed for extended period. We do not see any reason to deviate from the findings of the Tribunal which is more or less on identical facts. Consequently, following the said precedent, the appeals are allowed only on the ground of limitation.

(Dictated and pronounced in open court)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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