

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Custom Appeal No. 1521 of 2010

*(Arising out of Order-in-Appeal No.70/2010-Cus. dated
31.3.2010 passed by the Commissioner of Customs
(Appeals), Bangalore.)*

**The Commissioner of
Customs**
Mangalore.

Appellant(s)

Versus

Patanjali Foods Limited
*(formerly known Ruchi Soya
Industries Ltd.)*
No.301, Mahakosh House,
Nath Mandir Road,
Indore.
Mandya Pradesh.

Respondent(s)

WITH

**1. Customs Appeal No.1522 of 2010 [Commissioner of
Customs, Mangalore vs. Patanjali Foods Limited (formerly
known Ruchi Soya Industries Ltd.)]**

*(Order-in-Appeal No.70/2010 dated 31.3.2010 passed by the
Commissioner of Customs (Appeals), Bangalore.)*

**2. Customs Appeal No.1524 of 2010 [Commissioner of
Customs, Mangalore vs. Patanjali Foods Limited (formerly
known Ruchi Soya Industries Ltd.)]**

*(Order-in-Appeal No.70/2010 dated 31.3.2010 passed by the
Commissioner of Customs (Appeals), Bangalore.)*

**3. Customs Appeal No.1526 of 2010 [Commissioner of
Customs, Mangalore vs. Patanjali Foods Limited (formerly
known Ruchi Soya Industries Ltd.)]**

*(Order-in-Appeal No.70/2010 dated 31.3.2010 passed by the
Commissioner of Customs (Appeals), Bangalore.)*

**4. Customs Appeal No.1527 of 2010 [Commissioner of
Customs, Mangalore vs. Patanjali Foods Limited (formerly
known Ruchi Soya Industries Ltd.)]**

(Order-in-Appeal No.70/2010 dated 31.3.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

5. Customs Appeal No.2965 of 2010 [Commissioner of Customs, Mangalore vs. Patanjali Foods Limited (formerly known Ruchi Soya Industries Ltd.)]

(Order-in-Original No.10/2012-Commr. dated 31.7.2012 passed by the Commissioner of Customs, Mangalore.)

Appearance:

Mr. K. A. Jathin, AR	For the Appellant
None	For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21262 - 21267 / 2023

Date of Hearing: 17.11.2023
Date of Decision: 17.11.2023

Per : DR. D.M. MISRA

These appeals are filed by Revenue against following impugned orders passed by the Commissioner of Customs (Appeals), Mangalore.

Sl. No.	Appeal No.	OIA/OIO
1	C/1521/2010	Order-in-Appeal No.70/2010 dated 31.3.2010
2	C/1522/2010	
3	C/1524/2010	
4	C/1526/2010	
5	C/1527/2010	
6	C/2965/2012	Order-in-Original No.10/2012-Commr. dated 31.7.2012

Since the issue involved in all these appeals are same, they are taken up together for disposal.

2. Revenue being aggrieved by the Orders of the learned Commissioner (Appeals)/Commissioner, on various grounds, under Section 129A of the Customs Act, 1962.

3. During the pendency of these Appeals, it is brought on record that, Standard Chartered Bank filed a petition under Section 7 of Insolvency and Bankruptcy Code, 2016 (in short, "IBC, 2016") as the Financial Creditor for initiation of Corporate Insolvency Resolution Process (in short, "CIRP") against the respondent as Corporate Debtor and necessary Orders were passed by the Hon'ble National Company Law Tribunal (in short, "NCLT"), Hyderabad on 08th December 2017 & 15th December 2017. Later the NCLT approved the Resolution Plan under Section 31(1) of the IBC, 2016 and passed the Order dated 24.07.2019.

4. Consequent to the approval of Resolution Plan vide order dated 24.07.2019 and subsequent order dated 04.09.2019, the respondents have filed a miscellaneous application before this Tribunal on 20.06.2023. In the miscellaneous application, the respondents have narrated the facts of the proceedings before the Hon'ble NCLT and enclosed orders passed from time to time. Further, referring to the judgment in the case of *Ghansyam Mishra Vs. Edelweiss Reconstruction Company Ltd. - 2021 SCC Online SC 313* in relation to the respondent became infructuous, hence stands abated and any/all liability, if any, of any nature

whatsoever, stands extinguished and prayed accordingly in the said application.

5. Learned Authorised Representative for the Revenue submits that once the Resolution Plan is approved by the Hon'ble NCLT, the appeals stand abated as per Rule 22 of CESTAT (Procedure) Rules, 1982 and the Tribunal becomes *functus officio*. In support, he has relied on the following case-laws:-

- 1) *M/s MC Nally Sayaji Engineering Limited vs. CCGST, Bolpur* – 2023 (4) TMI 1076 – CESTAT KOLKATA
- 2) *CCE & ST, Surat-II vs. Arcelormittal Nippon Steel India Ltd* – 2023 (2) TMI 231 – CESTAT AHMEDABAD
- 3) *M/s Jet Airways India Ltd vs. CST, Mumbai-V* – 2023 (5) TMI 767 – CESTAT MUMBAI
- 4) *M/s Bhushan Power & Steel Ltd vs. CCE, Kolkata-IV* – 2023 (5) TMI 184 – CESTAT KOLKATA
- 5) *M/s Alok Industries Ltd vs. CCE, Belapur & Mumbai* – 2022 (10) TMI 801 – CESTAT MUMBAI
- 6) *M/s Murli Industries Ltd vs. CCE, Nagpur* – 2022 (11) TMI 289 – CESTAT MUMBAI

6. The issue involved in present appeals is: whether the respondents are entitled to continue with the Appeals and claim relief after Order of NCLT approving the resolution plan has been passed.

7. Undisputedly, during the pendency of the appeals, necessary orders have been passed 8th December, 2017 by the Hon'ble NCLT approving the Resolution Plan under Section 31(1) of the IBC, 2016.

8. The relevant provision under the CESTAT (Procedure) Rules, 1982 prescribed at Rule 22 reads as under:

“RULE 22. Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application. —

Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be : Provided that every such application shall be made within a period of sixty days of the occurrence of the event : Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit.”

9. The Mumbai Bench of this Tribunal in the case of *M/s. Alok Industries Ltd's* case (supra) analysed in detail Rule 22 of CESTAT (Procedure) Rules, 1982 and observed that aforesaid Rule 22 should be applicable the moment the successor interest with sufficient rights is appointed by NCLT to make an application for continuation of the proceeding. It is observed as:

“4.4 -----

Learned advocate has labored to explain why this rule should not be made applicable in his case. However, in view of the fact as stated in the para 4.2 and 4.3 above we are of the view that moment the successor interest with sufficient rights to be represented is appointed by the NCLT this rule will become applicable and it is for the successor interest to make an application for continuance of the proceedings. In the present case no such application has been filed by the successor interest for

the continuance of the proceedings and hence the appeal stands abated by the operation of this rule.

4.5

4.6 *There is no dispute to the binding nature of the resolution plan as approved by the NCLT. It has been settled by the Hon'ble Apex Court in the cases referred to by the learned counsel for the applicant.*

4.7 -----

4.8 *However, from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become functus officio in the matters relating to this appeal. Further it is also settled that the impugned orders in the appeals have got merged in the order of the NCLT approving the Resolution Plan. The decision of the Hon'ble Bombay High Court referred to by the learned Authorized representative clearly lays down the test as in which condition the said doctrine shall apply in following manner.*

4.9 *We are satisfied that the test laid down by the Hon'ble High Court is applicable in the present case for us to hold so. It is quite interesting to note that applicant to the extent of demand made finds the order of NCLT binding and wants pronouncement in respect of the refund by this tribunal. Can we sit in judgement over the order of NCLT approving the resolution plan? Further issue of refund is any case not the issue raised in appeal it is for the applicant to approach the relevant authorities in the matter.*

5.1 *The appeals filed abate as per the Rule 22 of the CESTAT Procedure Rules, 1982, with effect from the date of the approval of the resolution plan by the NCLT.*

5.2 *Since the appeals have abated the miscellaneous application filed by the applicant/appellant does not survive."*

10. Similar view has been expressed by other Benches of this Tribunal in the cases cited by the Id. A.R. for the Revenue i.e.(i) *M/s. MC Nally Sayaji Engineering Limited vs. CCGST, Bolpur –*

2023 (4) TMI 1076 – CESTAT KOLKATA; (ii) CCE & ST, Surat-II vs. Arcelormittal Nippon Steel India Ltd – 2023 (2) TMI 231 – CESTAT AHMEDABAD; (iii) M/s Jet Airways India Ltd vs. CST, Mumbai-V – 2023 (5) TMI 767 – CESTAT MUMBAI; (iv) M/s Bhushan Power & Steel Ltd vs. CCE, Kolkata-IV – 2023 (5) TMI 184 – CESTAT KOLKATA; (v) M/s Murli Industries Ltd vs. CCE, Nagpur – 2022 (11) TMI 289 – CESTAT MUMBAI.

11. In the respondent's own case, the Hon'ble Gujarat High Court in R/Tax Appeal No. 32 of 2019 taking note of the judgments on the subject including that of Hon'ble Supreme Court in *Ghansyam Mishra's* case held that in such circumstances, the appeal abates.

12. Needless to mention, as observed by the Hon'ble Supreme Court and High Courts in a catena of cases that the Tribunal is a creature of the statute; it cannot travel beyond the express powers vested under the Statute or Rules framed under the statute while deciding a statutory Appeal filed before it against the Orders of the prescribed statutory authorities mentioned under the statute. The corollary, any order passed by the Tribunal beyond the vested powers under the statute would be *non-est* in law.

13. In the circumstances, we are in complete agreement with the view consistently expressed by this Tribunal in a series of cases referred as above that the appeal abates once the IRP is

appointed and/or Resolution plan approved. Consequently, all the appeals filed by the Revenue abates as per Rule 22 of CESTAT (Procedure) Rules, 1982.

(Operative portion of the Order was pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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