CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH – COURT NO. 3

Excise Appeal No. 2353 of 2011

[Arising out of Order-in-Appeal No. 215/2010 dated 24.09.2010 passed by the Commissioner of Central Excise (Appeals), Mangalore]

M.K Agrotech (P) Ltd.
389, Kaveri Layout, M.B. Road
P.B. No. 20
Srirangapatna
Mandya District - 571 438 **....Appellant**

VERSUS

Commissioner of Central Excise
Mysore
S1-S2, Vinaya Marga
Siddhartha Nagar
Mysore – 570 001 **....Respondent**

Appearance:

Mr. S. Loknath, CA for the Appellant
Mr. Rajesh Shastry, AR for the Respondent

Coram:

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20590 / 2024

Date of Hearing: 29.01.2024
Date of Decision: 26.07.2024

Per: Pullela Nageswara Rao

M/s. M.K. Agrotech Pvt. Ltd. the appellant is in the manufacture of Refined oil, classified under Chapter 15 of

Central Excise Tariff Act, 1985, which is exempt under Notification No. 3/2006 dated 01.03.2006.

2. The brief facts of the case are during the process of manufacture of refined oil certain waste and byproduct are generated, viz., Acid Oil, Fatty Acid, Gums and Waxes. The appellant submits that these impurities are removed from the crude oil and are obtained as waste during the refining of crude oil so as to make the oil fit for human consumption. The Department has issued show-cause notice alleging clandestine clearance of Acid Oil, Fatty Acid, Gums and Waxes, demanding duty with interest and proposed penalty under Rule 27 of Central Excise Rules, 2002 on the waste and by-products generated during the manufacture of refined oil for the month of November, 2008. The adjudicating authority held that acid oil is not a by-product but an item, which is manufactured by the appellant and also the other by-products/waste viz., fatty acid, waxes, gums are also not eligible for exemption under Notification No. 85/95-CE dated 18.05.1995, since the said notification does not apply to waste clear from the factory in which other excisable goods other than exempted goods are also manufactured. Further the appellant is manufacturing both exempted products i.e., refined edible oil and dutiable commodity i.e., acid oil, hence they automatically become ineligible to avail the benefit of Notification No. 85/95-CE for the wastes and by-products. Further he held that the appellant is not eligible for the benefit of SSI exemption under Notification 8/2003 dated 01.03.2003, since they have

exceeded the threshold turnover Rs. 400 lakhs in the preceding Financial Year. A duty of Rs. 3,30,320/- has been confirmed along with interest and penalty of Rs. 5,000/- was imposed on the appellant under Rule 27 of the Central Excise Rules, 2002. Aggrieved by the order the appellant filed an appeal before the Commissioner (Appeals).

3. Commissioner (Appeals) has upheld the Order-In-Original of the Adjudicating Authority confirming the duty demand of Rs. 3,30,320/- for the month of November, 2008 on the clearances of acid oil and other products along with interest and the penalty was also upheld.

4. The Commissioner (Appeals) in his findings has held that; the issue to be decided is whether the appellant is eligible for the benefit of Notifications no. 89/95-CE dated 18.05.2005 in respect of other products viz., Acid oil, Fatty acid, Waxes and Gums, which are generated during the course of manufacture of refined oil and if they were held eligible, whether they are eligible for the benefit of SSI Notification No. 8/2003-CE dated 01.03.2003 as amended. Further Commissioner (Appeals) has noted that as held by the adjudicating authority, Acid oil is manufactured by the appellant and they have a separate plant within their factory for the manufacture and is sold to the customer for a price and since Acid oil has distinct name, characteristics and marketability, the same cannot be considered as waste product and the benefit of Notification No. 89/95-CE is not

applicable and the same is with the other products viz., gums, waxes, etc. which are sold for a consideration. Further, consequent to insertion of explanation to Section 2(d) of Central Excise Act, 1944 w.e.f. 01.05.2008, all the above products are excisable and chargeable to excise duty under the various chapter headings viz., Acid oil (Chapter 15), Fatty acids (Chapter 382300), Gums & Waxes (Chapter 152200) and agreed with the findings of the adjudicating authority. As regards the eligibility of SSI exemption Commissioner (Appeals) upheld the findings of the adjudicating authority since the appellant has exceeded the threshold limit of Rs. 4 Crore, in the preceding financial year they are not eligible for SSI exemption.

5. The learned counsel contended that; during the process of manufacture of refined oil certain wastes are generated and the intention of manufacturer is for making refined oil; though the generation of waste by-product no doubt may be called as goods as per the explanation to the definition under section 2(d) of the Central Excise Act, 1944, however it is not necessary that Notification 85/95-CE is not applicable; the goods are not manufactured with an intention of generating waste the notification 89/95-CE has not been deleted and the explanation under Notification is still applicable, hence no duty is payable on the waste product.

6. The learned counsel has relied on the following case-laws:

a. *Ricela Health Foods Pvt. Ltd. & others Vs. CCE, Chandigarh – 2018 (361) E.L.T. 1049 (Tri.-LB)*

b. *Habib Agro Industries Vs. C.C., C.E. & S.T, Mysore – 2023 (8) TMI 654 – CESTAT Bangalore*

c. *Vinayak Agrotech Ltd. Vs. CCE & ST, Jaipur-I - 2017 (11) TMI 598-CESTAT NEW DELHI*

d. *Arihant Solvex Pvt., Ltd. Vs. CGST, C.C. & C.E., Jodhpur 1 – 2019 (1) TMI 235 – CESTAT New Delhi*

e. *Adani Wilmar Ltd. Vs. CCE & ST, Ahmedabad – 2023 (3) TMI-535-CESTAT Ahmedabad*

f. *M/s. SSD Oil Mils Company Ltd. Vs. CCE, Chennai – 2018 (7) TMI 671 CESTAT Chennai*

g. *M/s. Sri Devi Oil Pvt. Ltd. Vs. CCE, Salem – 2018 (5) TMI 1117-CESTAT Chennai*

h. *M/s. Udyog Mandir Vs. CCE & ST, Jaipur – 2018 (5) TMI 1711-CESTAT, New Delhi*

i. *M/s. Suruchi Refinery Private Limited Vs. Commr. of GST and Central Excise – 2023 (9) TMI 714-CESTAT Chennai*

7. Learned Authorized Representative for the Revenue has submitted that Notification No. 89/95-CE exempts, waste parings and scrap arising in the course of manufacture of exempted goods and falling within the schedule to the Central Excise Tariff Act, 1985, from the whole of duty leviable thereon, which is specified in the said schedule, provided that

nothing contained in this notification shall apply to waste, paring and scrap cleared from a factory in which any other excisable goods other than exempted goods are also manufactured. He further submitted that the Acid oil etc., gets generated during the process of refining, wherein degummed oil is synthesized during the course of manufacture of refined oil and neutralized with Sodium Hydroxide, then Soap Stock, emerges out of the process of Neutralization involving thorough wash with High Speed Mixers and Vacuum Dry up. Soap Stock is later heated up to 80-90 degrees by using Steam and then mixed with Sulphuric Acid, the mixture is left for complete reaction for 4-5 Hrs. and water is drained out to get a new product called as 'Acid oil'. Certainly, it cannot be said to be falling under the category of three defined by-products viz. Waste, Parings and Scrap in the notification No. 85/97-CE. A harmonious reading of the exemption Notification needs to be limited to the goods, which emerge out at the very first processing of any Goods viz. Refined oil during which admittedly soap stock only emerges as waste, parings/scrap. If this product is again subjected to different stages of chemical processes etc., the new product so emerged cannot stand to qualify to fall as exempted goods by virtue of Notification No. 89/95-CE dated 18.05.1995.

8. Learned Authorized Representative also relied on the following case-laws:

a. *2019 (369) E.L.T. 1356 (Tri.-Chennai) – Raha Oils (P) Ltd. Vs. Commr. of C.Ex. & ST, Salem*

b. *No. 5448 of 2015, filed by Raha Oils (P) Ltd. against the judgment and order dated 04.12.2013 of Madras High Court in Civil Misc. Appeal No. 3316 of 2013 and M.P. No. 1 of 2013*

c. *A.P. Solvex Ltd. Vs. Commissioner – 2014 (300) E.L.T. A74 (S.C)*

9. Heard both sides and perused the records.

10. I find that the appellant has relied on the case-law of Ricela Health Foods, M.K. Agrotech, Habib Agro Industries, Vinayak Agrotech, Arihant Solvex, Adani Wilmar and SSD Oil Mills. I find that the contention of the Revenue is that when the product is capable of being sold for a consideration, the same cannot be considered as 'waste' post the amendment to Section 2(d) of the Central Excise Act, 1944 w.e.f. 10.05.2008 wherein Section 2(d) reads as under:

> *"excisable goods" means goods specified in the First schedule and Second schedule to Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt;*
>
> *Explanation:- for the purpose of this clause 'goods' include any article, materials or substance which is capable of being bought and sold for consideration and such goods shall be deemed to be marketable".*

11. I find in the impugned order, Commissioner (Appeals) has held that the benefit of Notification No. 89/95-CE is not available, since the products viz., acid oil, fatty acid, gums and wax are manufactured by the appellant and they are chargeable to excise duty under respective headings. The Commissioner (Appeals) held that his predecessor has taken a stand that the appellant is not eligible for the benefit of Notification No. 89/95-CE dated 18.05.1995 w.e.f. 10.05.2008, however has extended the benefit of SSI Notification No. 8/2003 dated 01.03.2003. However, in the impugned order Commissioner (Appeals) has upheld the order of adjudicating authority, wherein the benefit of SSI Exemption Notification 8/2003 dated 01.03.2003 has been disallowed, since the assessee has crossed the aggregate value of threshold exemption limit of Rs. 4 Crore. I find that the issue of products viz., acid oil, fatty acid, gums and waxes, which are generated during the process of refining of crude edible oil to produce refined edible oil has been the subject matter in the case of M/s. Ricela Health Foods, Vinayak Agrotech, Arihant Solvex and it has been decided that these products can be treated as 'waste' during the manufacture of refined edible oil, which is an exempt product and they are entitled for the benefit of exemption Notification No. 89/95-CE dated 18.05.1995.

12. I find that the issue is no longer *res integra* in view of the decisions cited above. Further, I find this Tribunal in the case of M/s. Habib Agro Industries and in the case of the

appellant's own case has decided that the Acid oil, Fatty acid, Gums and Waxes generated during the process of refining of oil are eligible for the benefit of Notification 89/95-CE dated 18.05.1995, considering them as waste.

13. In view of the above discussion and following the decisions of the Tribunal, the appeal is sustainable and needs to be allowed.

14. Accordingly, the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 26.07.2024)

(Pullela Nageswara Rao)
Member (Technical)

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