CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 20600 of 2015

(Arising out of Order-in-Original No. 25/2014 dated 18.12.2014
passed by the Commissioner of Central Excise, Bangalore)

M/s. Mysore Drier Tech,
Plot No.39, KIADB Industrial Area,
2nd Phase, Antharasanahalli,
Tumkur – 572 106. **……. Appellant(s)**

VERSUS

The Commissioner of Central Excise,
Bangalore-II Commissionerate,
CR Building,
No.1, Queen's Road,
Bangalore – 560 001. **….. Respondent(s)**

AND

Central Excise Appeal No. 21362 of 2015

(Arising out of Order-in-Original No. MYS-EXCUS-000-COM-JSC-016-14-15 dated 25.03.2015 passed by the Commissioner of Central Excise & Service Tax, Mysore)

M/s. Mangalore Engineering Works,
Chowdeshwari Building, No.21/D,
JP Nagar Main Road, III Stage,
Industrial Suburb, Vishweshwara Nagar,
Mysore – 570 008. **……. Appellant(s)**

VERSUS

The Commissioner of Central Excise,
Customs and Service Tax,
Mysore Commissionerate,
No.S1 & S2, Vinaya Marga,
Siddarthanagar,
Mysore – 570 011. **….. Respondent(s)**

Appearance:
Mr. K. Parameswaran, Advocate for the Appellant
Mr. M.A. Jithendra, Asst. Commissioner (AR) for the Respondent

CORAM:
Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr Pullela Nageswara Rao, Member (Technical)

Final Order No. 20825-20826 /2025

Date of Hearing: 16.04.2025
Date of Decision: 16.04.2025

PER: DR. D.M. MISRA

These two appeals are filed against respective Order-in-Original, since common issue is involved, they are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of paddy parboiling machinery / paddy driers / cleaning units and parts thereof during the relevant period. On the basis of investigation, show-cause notices were issued on 04.08.2014 and 08.09.2014 to the appellants alleging that the goods manufactured by them are classifiable under Chapters 84198990, 84193100 and 84199090 of the Central Excise Tariff Act, 1985 and the scrap generated under Chapter 72 of the Central Excise Tariff Act, 1985 and though their aggregate value of turnover had exceeded Rs.4.00 Crores during the Financial Year 2013-14 without payment of Central Excise duty. Central excise duty of Rs.1,79,53,956/- (Appeal No. E/20600/2015) and Rs.75,03,990/- (Appeal No. E/21362/2015) were demanded along with interest and penalty. On adjudication, the learned Commissioner confirmed the classification of the products proposed in the show-cause notice and also confirmed recovery of the differential duty along with interest and imposed penalty. Hence, the present appeals.

3.1 At the outset, the learned advocate for the appellants has submitted that the CBEC Circular No.982/06/2014-CX dated 15.05.2014 which effectively rescinded the earlier Circular No.924/14/2010-CX dated 19.05.2010 cannot have retrospective effect and can only be applied prospectively, thereof. He has submitted that even though the appellants had specifically argued before the adjudicating authority placing reliance on various decided case laws on the applicability of the Circular dated 15.05.2014, the learned Commissioner erred in holding that the said Circular is only of clarificatory nature. Further, he has submitted that it is a well laid down principles of law that Board's circulars are binding on the Department so long they remain in operation and it is not open to the Department to raise any contention contrary to the said Circulars even on the ground that it is inconsistent with the statutory provisions. Therefore, at least for the period prior to 14.05.2014, no demand would have been confirmed by the adjudicating authority. In support, they have placed reliance on the judgment of this Tribunal in the case of Jyoti Sales Corporation Vs. CCE [2020(374) ELT 936 (Tri. Chan.)]. He has further submitted that even though the issue regarding the classification of the goods in question has been decided against the appellants by the Larger Bench of this Tribunal in the case of Jyoti Sales Corporation Vs. CCE [2016(341) ELT 328 (Tri. LB)], wherein it has been held that Parboiling machinery / drier and parts thereof are classifiable under Chapter heading 8419; however, the Division Bench taking note of the said Circular dated 19.05.2010, held that no duty can be demanded till such time the Circular was withdrawn by the Department. This principle has been later followed by the Ahmedabad Bench of the CESTAT in the case of Rippen Radiators and Heat Exchangers Vs. CCE [Final Order No.11676-11677/2023 dated 10.08.2023]. Further, he has submitted that the judgment of the Division Bench in Jyoti Sales Corporation (supra) has been affirmed by the Hon'ble Supreme Court reported in 2023(10) Centax 225 (SC). Therefore, the demand confirmed for the period 01.07.2013 to 14.05.2014 deserves to be set aside along with interest and penalty. Further, he has submitted that for the period from 01.04.2013 to 30.06.2014, the appellant is entitled to cum-duty benefit and also SSI benefit admissible to them.

3.2 Further, advancing their alternative argument, the learned advocate for the appellants has submitted that even for the period after 15.05.2014, the goods viz. parboiling machinery and drier plant would be correctly classifiable under heading 8437 in view of the judgment of this Tribunal in the case of Ricetech Machinery Pvt., Ltd. Vs. CCE [Final Order No. A/30088/2024 dated 29.02.2024]. Further he has submitted that the learned adjudicating authority has erred in imposing penalty on the appellant even though the issue relates to classification and two conflicting Circulars have been issued by the Board on the same issue.

4. On the other hand, the learned Authorised Representative (AR) for the Revenue has reiterated the findings of the learned Commissioner. He has submitted that the issue of classification of parboiling machinery and drier plant and parts thereof under CETA 8427 is no more *res integra* since decided by the Larger Bench of this Tribunal in the case of Jyoti Sales Corporation [2016(341) ELT 328 (Tri. LB)], which has been later adopted by the Division Bench. Further, he has submitted that the decision in the case of Ricetech Machinery(supra) is not a binding precedent as the ratio of the Larger Bench of the Tribunal in Jyoti Sales Corporation(supra) has not been placed before the Division Bench while passing the said order.

5. Heard both sides and perused the records.

6. As the issue of classification of parboiling machinery and drier plant and parts thereof is no more *res integra* and decided by the Larger Bench of this Tribunal in Jyoti Sales Corporation case, which reads as under:

> ***"10. Discussions and findings***
>
> *The two competing Tariff Entries are 8419 and 8437, which stand reproduced in the earlier paragraphs. The par boiling machine as well as drier are used for steaming and drying paddy and also for reducing the moisture content in it. The processed Paddy is then sent to subsequent sections where*

de-husking, hulling, milling and polishing are undertaken. Briefly the par boiling process involves 3 stages, viz. Pre-soaking, soaking and steaming. In the 1st stage, clean paddy is steamed for 3 to 5 minutes. In the 2nd stage, pre-steamed paddy is soaked in water tanks for about 4 to 5 hours. In the last stage, the soaked paddy is passed through steaming process for 3 to 5 minutes. Subsequently, the steamed rice is dried in a drier which is also normally supplied along with par boiling rice machinery.

11. *From the processes outlined in the above paragraph, it is fairly clear that par boiling is a process which is used in the rice milling industry. The Heading 8437 covers machinery used in the rice milling industry. If we were to look at rice mill, it will have different types of machineries. The input to this process flow would be the raw paddy and the final output from the rice mill will be the polished rice. The par boiling machinery could be part of a rice mill or stand alone and in either case the final output will be parboiled polished rice. Hence, if we were to look at an entire rice mill including the par boiling machine, there is no doubt that the machine would be part of the rice mill. However, in the different cases which have come up before the Tribunal, we are dealing with the situation in which a factory manufactures par boiling machine and the drier which goes with it. The question before us is the correct classification of the machine as it is cleared from the factory. When we look at the function performed by the par boiling machine and the drier, it is too far-fetched to take the view that it is a machine to produce milled rice.*

12. *When we look closely only at the function performed by the par boiling machine, we find that it functions independent of the rice milling process. It has a specific function which involves the 3 stages namely pre-steaming, soaking and steaming followed by drying. When we look to* *see where such machines are classified, we are led to the Heading 8419. This heading covers machinery or plant, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, raster pasteurising, steaming, drying, etc. We do find that the functions performed by the par boiling machine and dryer are squarely covered in this Heading 8419.*

13. *It has been argued before us that 8419 excludes grain dampening machines whose classification is indicated as 8437. It has further been argued that the process undertaken in the making of par boiled rice is akin to grain dampening machines. We are not persuaded by this argument. The process carried out in the par boiling machine is far more than grain dampening. It involves not only soaking but also steaming and drying. Clearly, such a machine cannot be described as grain dampening machine.*

14. *When we look at the two clarifications issued by the Board dated 19-5-2010 and the subsequent clarification dated 15-5-2014, we find that initially the Board had suggested classification of the par boiling machine under 8437 considering it as a part of rice milling machinery. However, subsequent to the decision of the Tribunal in the Jyoti Sales Corporation case, in which the classification of such machines were made under 8419, the Board has revised its guideline and has suggested classification of such machines under 8419. In any case we are of the view that this is the classification which would be most appropriate for par boiling machines and/or driers manufactured and cleared from a factory.*

15. *It has been laboriously argued before us that reference should be made to Note 3 to Section XVI as well as Note to 2 Chapter 84 to decide the classification. It has* *also been argued that the par boiling machine and drier are fitted to the other machines which are used in a rice mill and the entire bank of interconnected machines function as a composite machine rendering the function of milling the rice. Accordingly, it has been argued that par boiling machine would be classifiable as part of such a rice mill under CETH 8437. We find such an argument is misdirected. Admittedly, Heading 8419 is a heading specific to the functions performed by a particular heading. The same does not refer to the industry specific machine but is relatable to function specific machines. If the classification is to be adopted, as contested by the assessee, on the basis of industry specific (like in the present case rice industry) then the machines which stand specifically covered under the said Heading 84.19, would get shifted to the other heading dependent upon the industry in which they are to be used, thus making the said entry as redundant and frivolous. It is well-settled principal of law that an interpretation which renders an entry otiose has to be avoided. As such, when viewed from this angle also, we get affirmed in our opinion of the par-boiling machine falling under Heading 84.19.*

16. *Further, in terms of again, the well-settled Principle of Interpretation, an item is required to be assessed, in the form, in which the same is cleared from the manufacturers factory and not on the basis of its future use, after clearance, unless it is the requirement of the entry. As such, we note that the par-boiling machine, when examined and assessed independently satisfies all the specification of Heading 84.19, thus making it compulsorily to fall under Heading 84.19."*

7. Later the principle laid down by the Larger Bench has been followed by the Division Bench, however, the Division Bench has restricted the demand for the period from 15.05.2014 observing

that the Circular No.924/14/2010-C dated 19.05.2010 issued earlier classifying the product under Chapter 8437 was rescinded only w.e.f. 15.05.2014. The Tribunal observed as follows:-

> ***"13.*** *In view of above analysis, we hold that for the period prior to 15-5-2014 if the appellants have classified their products in question under Chapter Heading No. 8437 of CETA, no demand is sustainable in terms of the Circular No. 924/14/2010-CX., dated 19-5-2010."*

8. The judgment in Jyothi Sales Corporation was later followed by the Ahmedabad Tribunal in the case of Rippen Radiators and Heat Exchangers (supra) observing as follows:-

> *"5. ....*
>
> *…....................…..*
>
> *From the above decision it can be seen that even though the Larger Bench has decided the merits of classification under heading 8419 but despite that the issue that when the Board Circular was in force which classified the goods under heading 8437 shall prevail as per various Supreme Court decisions discussed by the Larger Bench in the aforesaid decision.*
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> *6. As regards the Revenue's contention that at the time of issuance of show cause notice, the Board Circular dated 19.05.2010 was rescinded, we are of the view that it is not the date of issuance of show cause notice which is relevant but the period during which the goods were cleared. In the present case, the period involved is 2011-12 to 2013-14 and during this period the circular dated 15.05.2014 was not in force but during the relevant period the Circular dated 19.05.2010 was prevailing and according to which the goods were classifiable under Chapter heading 8437. Therefore, in view of the said Circular dated 19.05.2010 the appellant was not liable to pay any duty for the clearances made prior to rescinding the Circular dated 19.05.2010. Therefore, we are in complete agreement with*

the decision of this Tribunal in the case of Jyoti Sales Corporation – 2020 (374) ELT 936 (Tri. Chan.).'

Following the aforesaid precedent, even though the classification of the products under Chapter 8419, however recovery of the duty be effected only w.e.f. 15.05.2014.

9. As far as the judgment of this Tribunal in the case of Ricetech Machinery (supra) on the issue of classification is concerned, we agree with the learned AR for the Revenue that the said judgment cannot be a binding precedent on the classification issue inasmuch as the ratio laid down by the Larger Bench which has been later upheld by the Hon'ble Supreme Court by dismissing the appeal of the Revenue was not brought before the Division Bench and the order was passed without discussing the ratio laid down by the Larger Bench.

10. In the result, the impugned orders are modified to the extent of confirming the classification of the products under the respective heading as observed by the learned Commissioner; however, the demand with interest be limited for the period from 15.05.2014 onwards; and interest and penalty is set aside. Appeals are thus remanded to the adjudicating authority to recompute the demand accordingly. Appeals are partly allowed.

(Operative part of this order was pronounced in open court
on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja….