

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

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 20791 of 2015

(Arising out of Order-in-Appeal No. TVM-EXCUS-000-APP-162-163-14-15 dated 07.01.2015 passed by the Commissioner of Central Excise, Customs & Service Tax, (Appeals-III), Cochin)

M/s. Kerafed Oil Complex

K.S. Puram P.O., Karunagaly,
Kollam, Kerala - 690544

.....Appellant(s)

VERSUS

Commissioner of Central Excise,

T.C. No. 26/334(1&2),
ICE Bhavan, Press Club Road,
Trivandrum, Kerala - 695001.

.....Respondent(s)

WITH

Excise Appeal No. 21677 of 2015

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Appearance:

Mr. Manoj Pillai, Advocate for the Appellant

Mr. Rajesh Shastry, Authorised Representative (AR) for the Revenue

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

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

Final Order Nos. 21749-21750 /2024

Date of Hearing: 05.12.2024

Date of Decision: 05.12.2024

Per: P. A. Augustian

The issue in the present appeals is regarding classification of the 'coconut oil' packed in '200ml capacity' and demand of excise duty on the same.

2. The brief facts are the Appellant is unit of Kerala Kerakarshaka Sahakarana Federation Ltd., an Apex co-operative body of Government of Kerala and manufacturing coconut oil falling under Chapter Heading (CETH)15131900 of schedule to the Central Excise Tariff Act, 1985 and was marketed under the brand name 'Kera'. Alleging that the said coconut oil is chargeable to excise of duty, proceedings were initiated and Adjudication Authority confirmed the demand. Aggrieved by said orders, appeals were filed before Commissioner (Appeals) and Commissioner (Appeals) as per the impugned orders upheld the demand. Appeal No. E/21677/2015 pertains to the period from 01.04.2010 to 31.03.2011 and Appeal No. E/20791/2015 is for the period from 01.04.2005 to 31.03.2011.

3. When the appeals came up for hearing, Learned Counsel for the appellant submits that the issue is no more *res-integra* and the issue is covered by the decision of this Tribunal in the matter of M/s. Capital Technologies Ltd. and Others Vs. Commissioner of Central Excise & Service Tax, Tirupati. Further CBEC vide Circular No. 1007/2015 dated 12.10.2015 clarified that;

"3.1. In case of Raj Oil Mills Ltd. vs. Commissioner, Central Excise [2014 (314) ELT 541/2013-TIOL-1609 CESTAT], Hon'ble Tribunal held that edible Coconut Oil in retail packing of 200ml or less is classifiable under Chapter 15 covering Animal or Vegetable Fats and Oils and not under Chapter 33 covering Cosmetics and Toilet Preparation. Civil Appeal filed by the department against the order in the Hon'ble Supreme Court has been dismissed on merits.

3.2 In the case of Capital Technologies Ltd. & Ors vs CCE, Tirupati reported in [2015(321) ELT 479/2011-TIOL-775-CESTAT], Hon'ble Tribunal examined the issue of classification of Coconut Oil packed in retail packs of 50 ml, 100 ml, 200 ml and 500 ml. After discussing the amendments to Chapter note 3 to Chapter 33 and Section Note 2 to Section VI w.e.f 28.02.2005, Tribunal held that the edible coconut oil packed in retail packs ibid would be classifiable as Coconut oil under heading no. 1513 and not as Hair oil under heading no. 3305. Civil Appeal filed by the department against the order has been dismissed by the Hon'ble Supreme Court on facts only.

4. In view of the judgments of the Hon'ble Courts, the Central Board of Excise & Customs withdraws Circular No. 890/10/2009-CX dated June 03, 2009. The issue of classification may be decided by the field taking into consideration the facts of the case read with the judicial pronouncements."

4. Learned Authorised Representative (AR) fairly admits that the issue is covered by CBEC, Circular No. 1007/2015 dated 12.10.2015.

5. Heard both sides perused the records.

6. We find that the issue is squarely covered as per the CBEC, Circular No. 1007/2015 dated 12.10.2015. Considering the same, appeals are allowed with consequential relief, if any, in accordance with law.

*(Operative portion of the order dictated and pronounced in
Open Court on conclusion of the hearing.)*

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)