

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

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20833 of 2016

(Arising out of Order-in-Original No.MLR-EXCUS-000-COM-MS-0022-2015-16 dated
29.12.2015 passed by the Commissioner of Central Excise & Service Tax, Mangaluru.)

M/s. SKF Boilers and Driers Pvt., Ltd.

129, Bannadka

P.O: Belavai - 574 213

Moodbidri, Mangalore

.....**Appellant(s)**

VERSUS

**Commissioner of Central Excise
and Service Tax, Mangalore**

7th Floor, Trade Centre

Bunts Hostel Road

Mangalore - 575 003

.....**Respondent(s)**

WITH

(i) Central Excise Appeal No. 20156 of 2017

[Arising out of Order-in-Original No. MLR-EXCUS-000-COM-MS-007-16-17
dated 26.10.2016 passed by the Commissioner of Central Excise and Service Tax,
Mangaluru]

(ii) Central Excise Appeal No. 20706 of 2017

[Arising out of Order-in-Original No. MLR-EXCUS-000-COM-MS-20-16-17
dated 09.02.2017 passed by the Commissioner of Central Excise and Service Tax,
Mangaluru]

(iii) Central Excise Appeal No. 20373 of 2018

[Arising out of Order-in-Original No. MLR-EXCUS-000-COM-MS-04-17-18
dated 30.11.2017 passed by the Commissioner of Central Excise and Central Tax,
Mangaluru]

(iv) Central Excise Appeal No. 20016 of 2021

[Arising out of Order-in-Appeal No. MLR-EXCUS-000-APP-MSC-015-2020-21
dated 22.09.2020 passed by the Commissioner of Central Tax (Appeals),
Belgaum]

APPEARANCE:

Mr. M.S. Nagaraja, Advocate for the Appellant

Mr. Vikalp Jain, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order Nos. 22258 - 22262 /2025

Date of Hearing: 28.10.2025

Date of Decision: 28.10.2025

PER: P.A. AUGUSTIAN

The issue in the present appeals is regarding classification of Paddy Par Boiling Machines.

2. The brief facts are the Appellant is manufacturing Paddy Processing Machines or Paddy Par Boiling Machines and were classifying the goods under Central Excise Tariff Heading (CETH) 8437 8020 and 'parts' of the said machinery were classified under Central Excise Tariff Heading (CETH) 8437 9020 of the Central Excise Tariff Act, 1985. Alleging that the classification made by the Appellant is incorrect, proceedings were initiated and show cause notice dated 09.01.2009 was issued proposing to reclassify the goods under Central Excise Tariff Heading (CETH) 8419 against the classification of the Appellant under Central Excise Tariff Heading (CETH) 8437. Thereafter Adjudication authority confirmed the demand along with interest and imposed penalty. Aggrieved by said order, an appeal was filed before this Tribunal and this Tribunal vide Final order No. 1313/2010 dated 18.10.2010 set aside the adjudication order and directed classification in terms of the instruction of CBEC vide Circular dated 19.05.2010. On Denovo adjudication, the Adjudication authority confirmed the classification under Central Excise Tariff Heading (CETH) 8437 as made by the Appellant and dropped the proceedings. Subsequently, Respondent issued show cause notice dated 28.08.2014 on the same issue of classification relying on the Circular No. 982/06-2014-CX dated 15.05.2014 for the period from August, 2013 to July, 2014 proposing reclassification of the goods under Central Excise Tariff Heading (CETH) 8419 and demanding duty with interest and penalty. Though the Circular No. 924/14/2010-CX dated 19.5.2010 relied by the Adjudication Authority for issuing the show cause notice was rescinded vide Circular dated 15.05.2014, Adjudication Authority confirmed the demand for the period from August, 2013 to September, 2014 and appropriated the amount paid by the Appellant under protest. Aggrieved by said order, Appeal No. E/20833/2016 is filed. Subsequently for the period from October, 2014 to July, 2015 demand was made and

Adjudication authority as per the impugned order dated 10.11.2016 confirmed the demand and aggrieved by said order, Appeal No. E/20156/2017 is filed. Similarly for the period from August, 2015 to March 2016 similar demand was confirmed vide impugned order dated 13.02.2017 and Appeal No. E/20706/2017 is filed. Further for the period April, 2016 to March, 2017, demand was made and as per the impugned order dated 29.12.2017 it is confirmed and aggrieved by said order, Appeal No. E/20373/2018 is filed. Subsequently, statement of demand was made for the period from April, 2017 to June, 2017 and it was confirmed as per the impugned order dated 14.10.2019 and aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the order dated 25.09.2020 rejected the appeal and aggrieved by the said order, Appeal No. E/20016/2021 was filed.

3. The issue involved in the above 5(five) Appeals being the same they are taken up together for hearing and are disposed by this order.

4. When the appeals came up for hearing, Learned Counsel for the Appellant draws our attention to the decision of this Tribunal in Appellant's own case for the previous period and on remand, the demand was dropped by the Adjudication Authority following the Circular No. 924/14/2010-CX dated 19.5.2010 issued by the Board. In this regard, Learned Counsel submits that it is well settled law that the adjudicating authority can depart from the earlier stand for cogent reasons such as fresh facts, or the process of manufacture has changed or the relevant Tariff Entry has been amended, etc. The Learned Counsel for the Appellant relies on the following judgments:

(i) JK Synthetics Ltd. Vs. UOI - 1981 (8) E.L.T. 328 (Del.)

**(ii) Reckitt & Colman of India Ltd. Vs. Asstt. Collr. of C.Ex.,
Hyderabad - 1994 (72) E.L.T. 263 (A.P.) maintained by
1995 (76) E.L.T. A55 (S.C)**

5. The Learned Counsel for the Appellants submits that the issue of classification of Par Boiling Machine and Dryer has been considered by

the Larger Bench of the Hon'ble Tribunal in the case of **Jyoti Sales Corporation Vs. CCE, Panchkula - 2016 (341) E.L.T. 328 (Tri-LB)**. The Larger Bench relying on the CBEC Circular No. 982/06/2014-CX, dated 15.05.2014 has held that the function of Parboiling Machine and dryer show that they are classifiable under Chapter Heading 8419 and not as Rice Mill Machinery under Chapter Heading 8437. The said order was challenged before the Hon'ble Supreme Court in Civil Appeal Diary No. 6607/2017 and the same stands admitted vide Order dated 13.04.2017 and tagged with Civil Appeal No. 8612/2011.

6. Learned Counsel submits that demand of duty for the period up to 15.05.2014 is contrary to settled law in Appeal No. E/20833/2016. CBIC vide Circular No. 924/14/2010-CX dated 19.5.2010 had clarified that Parboiling Machinery, Drier plant and Rice mill in conjunction form the paddy processing. Thus, such a plant can be considered as composite machines fitted together to perform the function of rice milling which is the principal function of such a combination. Composite machines or multifunction machines are required to be classified in accordance with Note 3 and Note 4 of Section XVI. As per this clarification available in the HSN, the parboiling machine and dryers which are part of composite machine (rice mill) would be correctly classified in terms of Section Notes 3 and 4 and therefore, the correct classification should be under Central Excise Tariff Heading (CETH) 8437.

7. Learned Counsel also submits that it is well settled position that the beneficial Circular issued by the CBEC has to be applied retrospectively, while oppressive Circular has to be applied prospectively. Thus, when the Circular is against the assessee, they have a right to claim enforcement of the same, prospectively. Learned Counsel for the Appellants relied on the following judgments:

- (i) Suchitra Components Ltd. Vs. CCE, Guntur -2007 (208) E.L.T. 321 (S.C)**
- (ii) CCE, Bangalore Vs. Mysore Electricals Industries Ltd. - 2006 (204) E.L.T. 517 (S.C)**

**(iii) H.M Bags Manufacturer Vs. Collr. of C.Ex. - 1997 (94)
E.L.T. 3 (S.C)**

**(iv) Paper Products Ltd. Vs. CCE - 1999 (112) E.L.T. 765
(S.C)**

8. Learned Counsel further submits that even in the matter of **Jyothi Sales Corporation (supra)** which is under challenge before the Hon'ble Supreme Court, in this case the Tribunal Chandigarh held as follows

"11. Further, we take note of the fact that in the case of Suchitra Components Ltd. (supra) as held that the beneficial circulars to be applied retrospectively while oppressive circular applicable prospectively. Admittedly, the circular dated 15-5-2014 is against the appellants, therefore, the same is to be operative w.e.f. 15-5-2014 and for the period prior to 15-5-2014, the appellants are entitled for the benefit of the Circular dated 19-5-2010 by classifying their products under Chapter Heading No. 8437 of CETA."

9. As regards demand against steel alloys, steel scrap, Learned Counsel submits that Steel /Alloy Steel Scrap are eligible for exemption. Learned Counsel submits that the Stainless Steel (SS) scrap is not intended to be manufactured as alleged in the show cause notice (SCN) dated 28.8.2014 and upheld by the impugned order, but emerges in the course of manufacture of Paddy Processing Plant and Boilers which were exempt from excise duty. Therefore, the same is eligible for exemption from the whole of duty on scrap in terms of Notification No. 89/95-CE dated 18.5.1995.

Notification No. 89/1995 dated 18.5.1995 is extracted below:

"Waste, parings and scrap arising during manufacture of exempted goods - Exempted

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the

public interest so to do, hereby 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 (5 of 1986), from the whole of the duty of excise leviable thereon which is specified in the said Schedule:

Provided that nothing contained in this notification shall apply to waste, parings and scrap cleared from a factory in which any other excisable goods other than exempted goods are also manufactured.

Explanation. - For the purpose of this notification, the expression "exempted goods" means excisable goods which are chargeable to "Nil" rate of duty or, are exempted from the whole of the duty of excise leviable thereon by any other notification (not being a notification where exemption from the whole of duty of excise is granted based upon the value or quantity of clearances made in a financial year) issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 or sub-section (1) of section 5A of the said Act."

10. Learned Counsel further submits that the Appellant is also eligible for cum-duty price, since they have not collected any amount over and above the price of the goods sold to buyers and show cause notice and the impugned orders have not disputed these facts. Considering the same, the price has to be considered as cum-duty price and Appellant is eligible for the cum-duty price. As regarding the benefit of CENVAT credit, Learned Counsel submits that even if the Appellant is held liable for payment of excise duty as demanded, Appellant is eligible for availing CENVAT credit on all the inputs and capital goods used in or in relation to the manufacture of subject goods. Accordingly, Appellant is eligible to utilize the CENVAT credit.

11. As regards the penalty, Learned Counsel submits that the dispute in the present case pertains to classification of goods and the same is a matter of interpretation of law. Law is settled that when issue relates to interpretation of law, there is no justification to impose any penalty.

Further Learned Counsel submits that invoking the extended period of limitation is also barred by limitation. Accordingly, demanding duty and invoking extended period of limitation imposing penalty are unsustainable.

12. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned orders and submits that the issue is no more *res integra*. Following the Circular No. 982/06-2014-CX dated 15.05.2014 issued by the Board in 2014, matter was considered by Larger Bench and in the matter of **Jyothi Sales Corporation (supra)** and accordingly, the impugned goods are classifiable under Central Excise Tariff Heading (CETH) 8419 and not as Rice Mill Machinery under Central Excise Tariff Heading (CETH) 8437 as claimed by the Appellant. Further as regards pendency of the appeal before the Hon'ble Supreme Court, Learned AR submits that in the absence of any stay, the finding of the Larger Bench in the matter of **Jyothi Sales Corporation** is binding on this Tribunal.

13. Heard both sides and perused the records.

14. We find that the issue is no more *res integra* and following the ratio of the decision of Larger Bench in the matter of **Jyothi Sales Corporation**, the goods are classifiable under Central Excise Tariff Heading (CETH) 8419 as held by the Adjudication Authority. However, we find strong force in the submission of the Learned Counsel that when the classification is made once as per the Circular No. 924/14/2010-CX dated 19.5.2010 issued by the Board and considering the finding of this Tribunal in Appellant's own case for the previous period, to follow the decision in **Jyothi Sales Corporation** would be for the period from 15.05.2014 and for the period prior to 15.05.2014, the Appellant is entitled for the benefit of Circular dated 19.05.2010 by classifying their products under Chapter Heading 8437 of Central Excise Tariff Act, 1985.

15. As regards demand against steel alloys, steel scrap, we find that in terms of Notification No.89/95-CE dated 18.05.1995, waste, scrap,

etc., are 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 the duty of excise leviable thereon which is specified in the said Schedule. Thus, the said demand is unsustainable.

16. Further as regards the contention of the Appellant for invoking the extended period of limitation and penalty, we find that it is an issue regarding classification of goods and it is a matter of interpretation of law. Further considering the contradictory Circulars issued by the Board on the very same issue, invoking extended period of limitation and imposition of penalty are unsustainable.

17. As regards cum-duty price and benefit of CENVAT credit, since the issues were not considered by the Appellate Authority, issues have to be remanded for reconsideration. Accordingly, the duty confirmed in the impugned orders are sustainable for the period after 15.05.2014, demand along with interest confirmed by invoking the extended period of limitation and imposition of penalty are unsustainable. The matter is remanded to the Lower Authority for quantifying the excise duty payable by Appellant with interest if any as applicable for the above said period and Adjudication Authority is directed to consider the claim of the Appellant regarding extending the benefit of CENVAT credit and also the cum-duty price in accordance with law.

18. Accordingly, Appeals are partially allowed in the above terms by way of remand to the Adjudicating Authority.

*(Operative portion of the order was pronounced in open court
on conclusion of hearing)*

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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