

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

E/22353/2015-DB

[Arising out of Order-in-Original No. BLR-EXCUS-004-COM-07-15-16 dated 27/08/2015 passed by Commissioner of Central Excise , BANGALORE-IV]

**Sri Murugarajendra Oil Industry
Pvt Ltd**

PB No 86, Davangere Road,
CHITRADURGA - 577502
KARNATAKA

Appellant(s)

Versus

**Commissioner of Central Excise,
Service Tax And Customs
Bangalore-iv**

Office of the Commissioner of Central Excise
& Service Tax
Bangalore-IV Commissionerate, 59, HMT
Bhavan, Bellary Road
BANGALORE - 560032
KARNATAKA

Respondent(s)

Appearance:

Mr. T.V. Ajayan, Advocate

Chander Kumar & Associate
504, 4th Floor,Oxford Tow
Bangalore - 560008
Karnataka

For the Appellant

Mr. K.B. Nanaiah, AR

For the Respondent

Date of Hearing: 10/12/2018

Date of Decision: 10/12/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21888 / 2018

Per : P. ANJANI KUMAR

This appeal is directed against the OIO No. 07/2015-16 dated 27.08.2015 passed by the Commissioner of Central Excise, Bengaluru IV Commissionerate.

2. The brief issue involved in the case is that the appellants are manufacturing and clearing sun flower oil edible grade under brand name "Sun Shudh" and "Rashmi" without payment of duty claiming exemption under Notification No. 3/2006-CE dated 01.03.2006. The appellants have also been clearing by-products such as degrass residues resulting from the treatment of fatty substances or animal or vegetable waxes and soap stock, was, spent earth, fatty acid, sludge oil and gum falling under chapter heading 1522 of CETA, 1985 without payment of duty claiming benefit of Notification No. 89/1995-CE dated 18.05.1995. The appellants are also manufacturing Tin cans for packing edible oils. Therefore the Department has contended that as the appellants are manufacturing other excisable goods, they are not eligible for exemption under Notification No. 89/1995 dated 18.05.1995. The Commissioner has confirmed the demand of Rs.1,19,12,862/- and imposed equal penalty under Section 11AC. The period involved in the demand was from April 2011 to September 2013. Hence this appeal.

3. The learned counsel for the appellants has submitted that the issue is no longer *res integra* in view of the decision of Larger Bench of Hon'ble Tribunal in ***Ricela Health Foods Ltd. Vs. CCE, Chandigarh, Allahabad – 2018 (361) ELT 1049 (Tri. LB)*** wherein the Hon'ble Tribunal has applied the ratio of the Hon'ble Supreme Court judgment in the case of ***Commr. Vs. Indian Aluminium Co. Ltd – 2006 (203) ELT 3 (SC)*** and held that these incidental products are nothing but waste arising during the course of refining of rice bran oil and cannot be considered as manufactured excisable goods and that these waste will also be covered by the exemption Notification No. 89/1995-CE .

3.1 Learned counsel has further submitted that the SCN has been issued beyond the normal period and hit by limitation as the appellants have cleared the goods only after obtaining specific permission from the Jurisdictional Assistant Commissioner vide their letter C.No. IV/16/25/2009 B6 dated 22.03.2011. He further submitted that the Adjudicating Authority has misapplied himself by stating that the tins manufactured are excisable goods and hence the benefit of exemption Notification 89/95 is to be denied. The learned Commissioner has not considered the appellant's submission that the tins manufactured by the

appellants are also exempted goods in terms of Notification No. 10/96-CE dated 23.07.1996. The Joint Commissioner, Bangalore vide is Order No. BLR-EXCUS-0004-JC-27-2016 dated 16.11.2016 held that the tins manufactured by the appellants are eligible for exemption under Notification No. 10/96-CE dated 23.07.1996. He also submitted that this Bench of the Tribunal vide Final Order No. 393/2017 in respect of N.K. Agro Oils Pvt. Ltd. has held that the appellants are eligible for exemption under Notification No. 89/95 and the facts of the case in the case of the appellant and M/s. N.K. Agro Oils Pvt. Ltd. are identical.

4. The learned AR has reiterated the findings of OIO and OIA.

5. Heard both sides and perused the records of the case.

6. We find that the appellants are engaged in the manufacture of vegetable oils and the by-products that are incidental to the manufacture and are nothing but waste arising during the course of refining of the oil, the appellants can be held to be manufacturers of such waste products arising during the course of manufacture. We find that the Commissioner has erred in finding that the appellants are not eligible for the Notification No. 89/95 because they are manufacturing tins as submitted by the learned counsel for the appellants. The learned

Commissioner has not appreciated the fact that the tins manufactured are also eligible for exemption under Notification No. 10/96 as submitted by the appellant. We find that the case is no longer *res integra*. The Larger Bench of the Tribunal in the case of **Ricela Health Foods** (supra) has held as under:

“The thrust of the arguments by the Revenue is that when a product is capable of being sold for a significant consideration the same cannot be considered as waste. We are unable to accept such summary presumption. Admittedly, in chemical and metallurgical industry when the raw materials are processed with an intended purpose of manufacturing certain final products by a chemical reaction, refining, melting etc. multiple products will result. These products either emerged in the final stage or any of the intermediating stages also. The point for consideration is whether these are to be considered as manufactured goods for excise levy based on the statutory definition for manufacture or should be considered as manufactured goods based on the likely value they may command while selling. We are clear that the value that a product may or may not fetch cannot be a determinative factor to decide whether the same is a manufactured final product/by-product or a waste/refuse arising during the course of manufacture of final products. This much is clear from the ratio of the Apex Court decision in Indian Aluminium Co. (supra). While no general guidelines can be laid down to decide when a product will be treated as a waste or a by-product, in the present set of facts the products under consideration are clearly not in the nature of by-products emerging during the course of manufacture. The process of manufacturing refined vegetable oil is essentially by removing the

unwanted materials that were present in the crude vegetable oil so that a refined vegetable oil can be obtained. In this process of refining, the unwanted materials are removed. Hence, we are of the considered view that the removal of unwanted materials resulting in products like gums, waxes and fatty acid with odour cannot be called as a process of manufacture of these gums, waxes and fatty acid with odour. The process of manufacture is for refined rice bran oil. As such, we note that these incidental products are nothing but waste during course of refining of rice bran oil and applying the ratio of Apex Court, as discussed above, these cannot be considered as manufactured excisable goods. Noting that the reference is to decide whether these are to be treated as waste for the purpose of exemption Notification No. 89/95-CE we note though the excisability of the product itself is seriously in dispute as per the opinion expressed by us, as above, these cannot be considered as anything other than waste and as such will be covered by the exemption Notification No. 89/95-CE. This has been pleaded as an alternative argument by the appellant/assessee also”.

6.1 We find that the instant case is squarely covered by the above cited decision of the Larger Bench. We hold that the appellants are entitled to exemption contained in Notification No. 89/95-CE on the products which arise incidentally to the manufacture of vegetable oils. We find that the impugned order misplaced itself and the findings vis-à-vis Tin Boxes manufactured and captively consumed in the factory.

7. In view of the above, the appeal is allowed with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **10/12/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Parveen...