IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/249 – 252/2012

(Arising out of Order-in-Original No. 5/2011 dated 29.12.2011 passed by the Commissioner of Central Excise, Chennai-IV).

1. M/s. SSD Oil Mills Company Ltd. (2 appeals) : Appellants
2. Shri D. Ramamurthy (2 appeals)

Vs.

CCE, Chennai-IV : Respondent

Appearance

Ms. K. Nancy, Advocate
for the Appellant

Shri A. Cletus, ADC (AR)
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **23.04.2018**

FINAL ORDER No. **41293-41296/2018**

Per Bench

The allegation against the appellants is that they failed to discharge duty on the clearances of Fatty Acid, Soap Stock, Spent Earth etc.

2. The appellants are engaged in the manufacture of Refined Palm Oil, Refined Cotton Seed and Sunflower Oil, Refined Rice Bran Oil, Vanaspathi and Bakery shortening/ Margarine in their units situated at Iyappanthangal and Arakonam Road, Ulundai Village. During the manufacture of the above products, by products namely; fatty acid, soap stock, spent earth emerged which according to the department was liable to excise duty and therefore the appellants are not eligible for SSI exemption benefit. SCN was issued proposing demand of duty along with interest and also for imposing penalties. After due process of law, the adjudicating authority confirmed the demand, interest and imposed penalties. Aggrieved, the appellants are now before the Tribunal.

3. On behalf of the appellant, Ld. Counsel, Ms. K. Nancy submitted that the department has demanded duty on palm oil waste and waste earth cleared from the factory of the appellants. She argued that these items which arise during he course of manufacture of refined oil are not liable to Central Excise duty and the issue stands settled by the decision of the Larger Bench of the Tribunal in the case of *M/s Ricela Health Foods Ltd. & Others Vs. CCE, Chandigarh, Allahabad* – 2018 (2) TMI 1395 –CESTAT-New Delhi.

4. The Ld. AR, Shri A. Cletus, ADC, reiterated the findings in the impugned order.

5. Heard both sides.

6. The issue arises for consideration as to whether the fatty acid, soap stock and spent earth emerged during the course of manufacture of refined oil is to be treated as 'waste' or liable to excise duty or not. The said issue was considered by the Larger Bench of the Tribunal in the decision cited by the Ld. Counsel for the appellants and the Tribunal has held that the process of manufacture is for refined oil and the waste which arises during the course of such manufacture cannot be considered as manufactured excisable goods. Thus, no duty can be demanded on such items like fatty acids, soap stock and spent earth, which arise during the course of manufacture of refined oils. The relevant portion of the decision is reproduced as under:-

> "10. In view of the ratio adopted by the Apex Court while arriving at the above decisions, the point for consideration in the present dispute is the gums, waxes and fatty acid that emerge as a by-product can be considered as a products arising out of a manufacturing process. The appellants are engaged in converting crude rice bran oil into refined rice bran oil. In effect the processes undertaken by them are towards this intended final product. For producing refined rice bran oil, the gums and waxes available in the crude rice bran oil are to be removed by degumming and de-waxing. Thereafter by a process of deacidification / De-odourisation, by distillation the refined oil is obtained. In this final process fatty acid distillate (fatty acid with odour) is obtained as a waste. As can be seen the gums, waxes and fatty acid distillate are emerging due to removal / refining process of crude rice bran oil. As already noted the process is to obtain refined rice bran oil by removing these unwanted products alongwith spent earth, which when present makes the oil as crude refined oil.
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> 11. 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 arising 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 89/950-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 a alternate argument by the appellant/assessee also.”

7. Following the same, we hold that the demand cannot sustain. The impugned orders are set aside and the appeals are allowed with consequential reliefs to the appellants.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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