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

Appeal No.E/214/2012

[Arising out of Order-in-Appeal No.51/2011 dt. 15.12.2011 passed by Commissioner of Central Excise (Appeals), Salem]

Raha Oils (P) Ltd. Appellant

Versus

Commissioner of Central Excise & Service Tax,
Salem Respondent

Appearance :

Ms. D.Naveena, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing : 21.06.2018
Date of Pronouncement :21.08.2018

FINAL ORDER No. 42274 / 2018

Per Madhu Mohan Damodhar

The facts of the case are that appellants are procuring crude vegetable oil from various mills and refining the same in their factory. During this process, refined vegetable oil is obtained as a main product and soap stock as a by product. Soap stock is further converted to Acid Oil and Soap Sludge and cleared to various soap manufacturers without payment of duty. According to department, soap stock was classifiable under Central Excise Tariff Heading 15220020 and the residue soap sludge under CETH 15220090 and acid oil under CETH 38231900. Department took the view that Excise duty was required to be discharged by the appellants on acid oil and soap sludge. Accordingly, a show cause notice dt. 25.11.2010 was issued to the appellants, inter alia proposing demand of Central Excise duty of Rs.23,81,941/- with interest and also imposition of penalty under Section 11AC of the Act. After due process of adjudication, the original authority vide an order dt. 27.05.2011 confirmed the proposed demand and also imposed equal penalty under Section 11AC of the Central Excise Act, 1944. Appeal filed to Commissioner (Appeals) was rejected vide impugned order dt. 15.12.2011. Hence the appellants are before this forum.

2. When the matter came up for hearing, on behalf of the appellants, Ld. Advocate Ms. D. Naveena made oral and written submissions which can be broadly summarized as under :

i) Acid oil and soap sludge are only waste and were therefore being cleared without payment of duty in terms of Notification No.89/95-CE dt. 18.05.1995.

ii) Ld. Advocate draws our attention to the decision of Larger Bench of CESTAT in the case of *Ricela Health Foods Ltd. and others Vs CCE* – 2018 (2) TMI 1395 – CESTAT New Delhi wherein it was held that such products are waste and exemption under Notification No.89/95-CE is applicable. The same view is reiterated by CESTAT Chennai in *Sri Devi Oil Pvt.Ltd. Vs CCE Salem* – 2018 (5) TMI 1117- CESTAT Chennai and *SSD Oil Mills Company Ltd. & Anr. Vs CCE Chennai* in Final Order No.41293-41296/2018 dt. 23.04.2018.

iii) The period of dispute is between 1.5.2006 and 31.10.2009. However show cause notice was issued only on 25.11.2010 and hence entire demand is beyond normal period of limitation.

iv) Extended period cannot be invoked since the appellant had sold the goods under proper documents, were paying Central Excise duty and the entire transaction were reflected in the financial records. Further, there was lot of confusion on availability of exemption under Notification No.89/95-CE, which had been referred to the Larger Bench of Tribunal. Only on the bonafide belief that duty exemption under Notification No.89/95-CE was very much available, the appellant had cleared the goods without payment of duty.

v) Since the issue is one of interpretation the allegation of intention to evade duty is not sustainable.

vi) They placed reliance upon the ratio of the following case law :

(1) Steelcast Ltd. Vs CCE Bhavnagar
2009 (14) STR 129 (Tri.-Ahmd.)

(2) CCE Pune Vs Core Fitness (P) Ltd.
2017 (4) GSTL 80 (Tri.-Mumbai)

(3) Padmini Products Vs CCE – 1989 (43) ELT 195 (SC)

(4) CC Vs Cochin Minerals & Rutiles Ltd. 2010 (259) ELT 182 (Ker.)

3. On the other hand, Ld. A.R Shri K. Veerabhadra Reddy supports the impugned order. He draws our attention to para-5 of the impugned order where after analysis of the matter, the Commissioner (Appeals) has found that soap stock is obtained during the course of manufacture of the final product and acid oil and soap sludge are derived only after processing of soap stock. As this product has got distinct character, they do not merit to be classified under

Chapter Heading 1515 of the CETA 1985. In this case, the impugned goods are not obtained during the course of manufacture but only after processing of the waste which is obtained from the manufacture of the exempted final product.

4. Heard both sides and have gone through the facts of the matter.

5.1 The Larger Bench of the Tribunal in *Ricela Health Foods Ltd.* 2018 (2) TMI 1395 – CESTAT New Delhi relied upon by Ld. Advocate, had considered the issue whether fatty acids, wax and gum arising in the course of manufacture of refined vegetable oil are to be treated as “waste” for the purpose of Exemption Notification No.89/95-CE or otherwise. The Larger Bench held that it is clear that the value that a product may or may not fetch cannot be a determinative factor to decide whether the same is manufactured final product / by product or a waste / refuse arising during the course of manufacture of final products. Relying on the judgement of the Hon’ble Apex Court in *CCE Vs Indian Aluminium Company* – 2006 (203) ELT 3 (SC), the Larger Bench held that removal of unwanted material resulting in products like gum, wax, and fatty acid with odour cannot be called as a process of manufacture of such items. The process of manufacture is for refined rice bran oil; As such the incidental products are nothing but waste arising during course of refining of rice bran oil and applying the ratio of Apex Court, this cannot be considered as manufactured excisable goods. The said goods cannot be considered as anything other than waste and as such will be covered by the Exemption Notification No.89/95-CE.

5.2 We note that the ratio of *Ricela Health Foods Ltd.* (supra) has been followed by CESTAT Chennai in *Sri Devi Oil Pvt.Ltd. Vs CCE Salem* – 2018 (5) TMI 1117- CESTAT Chennai and *SSD Oil Mills Company Ltd. & Anr. Vs CCE*

Chennai [Final Order No.41293-41296/2018 dt. 23.04.2018]. A careful reading of the Larger Bench decision *Ricela Health Foods Ltd.* (supra) as also other subsequent decisions of Tribunal relied upon by the Ld. Advocate will reveal that in all these cases, the contentious issue concerns the excisability of the items which have arisen during the course of refined oils e.g like Fatty acids, Soap stock, Spent earth and arising in the course of manufacture refined oil. We have no quarrel with this ratio that has been consistently followed by the Tribunal in a number of cases. However, in all these decisions what has been held is that unintended products arising during the course of refining of edible oil are nothing but waste. We have no difficulty in applying the very same ratio to the product “soap stock” which emerges during the course of refining of vegetable oil in the factory of the appellants.

5.3 However, it is pertinent to note that the dispute in this appeal is not on the excisability or otherwise of the “Soap Stock”. The nub of controversy is whether ‘Acid Oil’ and ‘Soap Sludge’ which are obtained by further conversion of such Soap Stock would require to be treated as ‘excisable goods’ requiring discharge of Central Excise duty liability.

5.4 Discernably, in the first instance, during the refining of various vegetable oils, soap stock was an <u>unintended</u> by product. As we mentioned earlier, the ratio of the Apex Court in *Indian Aluminium Company* (supra) and of the various Tribunal’s decisions like *Ricela Health Foods Ltd.* (supra) and others would squarely apply with regard to “soap stock”, hence it cannot be held as excisable goods and denied benefit of Notification No.89/95-CE. However, as per the facts on record, Soap Stock is then <u>consciously again processed</u> by the appellants which results in emergence of Acid Oil and Soap Sludge. It then cannot be said that emergence of acid oil is an unintended by product.

5.5 Viewed in this context, the acid oil is an intended final product resulting out of conscious process of soap stock. The said acid oil would then have to be considered as a new product with a different name, character and use, and exigible to excise duty as applicable. To this extent, we find no infirmity in the upholding of duty liability on this score.

5.6 However, applying the ratio of *Ricela Health Foods Ltd.* (supra) and subsequent Tribunal decisions on the issue, soap sludge which has emerged during the manufacture of acid oil will similarly have to be considered as 'waste' only. The said soap sludge will then not be exigible to excise duty and will have to be treated as waste, benefiting from exemption notification No.89/95-CE.

5.7 The impugned order has upheld the order of original authority quantifying excise duty liability based on value of acid oil and soap sludge cleared by them during the period 1.5.2006 to 31.10.2009. The Annexure to SCN gives a combined clearance value of Rs.1,59,20,615/- and the duty liability of Rs.23,81,940/- is worked out on the said combined value. However, in view of our finding that the soap sludge will have to be considered as 'waste' and 'non-excisable', duty liability can sustain only in respect of the clearance of acid oil manufactured by converting / processing the soap stock. The manner of calculation of duty liability arrived at in the Annexure to the SCN will then have to be reworked to restrict the assessed liability with interest as applicable, only to clearances of "acid oil" (during the impugned period). For this limited purpose, the matter is being remanded to the original adjudicating authority. So ordered.

5.8 It is clarified that interest liability as applicable will be payable on such reworked duty liability.

6. Coming to the issue of penalty, as the issue on excisability of the by product / waste arising in such refining of vegetable oil was mired in confusion and also in litigation for quite some time till the Larger Bench decision on 30.11.2018 in the case of *Ricela Health Foods Ltd.* (supra), the ingredients of Section 11AC cannot be foisted on to the appellants. For such reason, the penalty of Rs.23,81,941/- imposed on the appellants under that Section will require to be set aside, which we hereby do. So ordered.

7. In the result, the appeal is partly allowed and partly remanded to the adjudicating authority on above terms.

(Pronounced in court on 21.08.2018)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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