IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 41410 of 2013

(Arising out of Order-in-Appeal No. 191/2013 dated 22.05.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D., Street, Race Course Road, Coimbatore - 641 018)

M/s. Suruchi Refinery Private Limited **...Appellant**
S.F. No. 260/1-B-3, Kodangipalayam Village,
Trichy Main Road,
K.N. Puram Post,
Coimbatore - 641 662.

Versus

Commissioner of GST and Central Excise **...Respondent**
6/7, A.T.D. Street,
Race Course Road,
Coimbatore - 641 018.

Excise Appeal No. 40182 of 2016

(Arising out of Order-in-Appeal No. 155/2015 dated 30.10.2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D., Street, Race Course Road, Coimbatore - 641 018)

M/s. Suruchi Refinery Private Limited **...Appellant**
S.F. No. 260/1-B-3, Kodangipalayam Village,
Trichy Main Road,
K.N. Puram Post,
Coimbatore - 641 662.

Versus

Commissioner of GST and Central Excise **...Respondent**
6/7, A.T.D. Street,
Race Course Road,
Coimbatore - 641 018.

APPEARANCE:
For the Appellant : Shri M. Saravanan, Consultant
For the Respondent : Shri Harendra Singh Pal, Assistant Commissioner / A.R

CORAM:
HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING / DECISION : 14.09.2023

FINAL ORDER Nos.40800-40801/ 2023

Order : Per Ms. SULEKHA BEEVI C.S.

The issue involved in both these appeals being the same they were heard together and are disposed of by this common order.

2. Brief facts are that the appellants are engaged in the process of refining the crude coconut oil and are clearing the refined coconut oil availing full exemption under Notification No. 4/2005-CE dated 01.03.2005. They were also clearing 'Sludge Oil' (Soap Stock) which is a bye product arising in the course of the manufacture of refined coconut oil. The Department was of the view that the appellant has to pay duty on the Sludge Oil (Soap Stock). A Show Cause Notice was issued proposing to demand the duty on Sludge Oil for the different periods. After due process of law, the original authority confirmed the demand, interest and imposed penalty. Against such order, the appellant filed appeal before the Commissioner (Appeals) who upheld the same. Hence, these appeals.

3.1 The Ld. Consultant Shri M. Saravanan appeared and argued for the appellant. The details of the appeals, the period involved and the duty demand is furnished in the table below:-

Sl.No	Particulars	E /41410/2013	E/40182/2016
1	Period of Dispute	01.12.2010 to 30.09.2011	01.10.2013 to 31.07.2014
2	Show cause notice no	01/2021 (JC-ADC) dt 06.01.2012	13/2014 –DC dt 05.11.2014
3	Order in Original no	09/2012 [JC-ADC] dt 30.11.2012	37/2014 DC dt..01/2015
4	Order in appeal no	CMB-CEX-000-APP-191-13 dt 20.05.2013	CMB-CEX-000-APP-155-15 dt 30.10.2015
5	Duty demand	Rs.5,58,268	Rs,4,71,182
6	Penalty -u/r 25	Rs.5,58,268	Rs,4,71,182
7	Interest	Not quantified	Not quantified

3.2 It is submitted that as per Notification No. 89/95-CE dated 18.09.1995 when the final product is exempted from duty, the waste product arsing in the course of the manufacture of the final product is also eligible for exemption. For this reason, the appellants are not eligible to pay duty for the Sludge Oil. The very same issue was considered by the Larger Bench of the Tribunal in the case of *Ricela Health Foods Ltd. Vs. Commissioner of Central Excise, Chandigarh [2020 (372) ELT 142 (Tri. Chandigarh)]* as well as in the case of *Commissioner of Central Excise, Chandigarh I Vs. Marico Ltd. [2020 (382) ELT 436 (SC)].*

3.3 The above decision of the Tribunal was confirmed by the Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Chandigarh-I Vs. Marico Ltd. [2022 (382) ELT 436 (SC)]*. It is also submitted by the Ld. Consultant that in the appellant's own case for the earlier period 01.04.2006 to 30.06.2010, the proceedings were dropped by the adjudicating authority. The Department has not filed any appeal against such order. The Ld. Consultant prayed that the appeals may be allowed.

4. The Ld. Authorised Representative Shri Harendra Singh Pal supported the findings in the impugned order.

5. Heard both sides.

6.1 The issue that arises for consideration in these appeals is whether the Sledge Oil (Soap Stock) which emerges during the manufacture of refined coconut oil is eligible for exemption under Notification No. 89/95-CE dated 18.09.1995 or not. The very same issue was considered by the Tribunal in the case of Ricela Helath Foods Ltd. Vs. Commissioner of Central Excise *[2018 (361) ELT 1049 (Tri. -LB)]*. The relevant paragraphs read as under:-

> ***"9.*** *We have heard both the sides and perused the appeal record to examine the reference made by the Division Bench. Since the appellants submitted on the excisability itself the first point for decision is the excisability of the products, in question. The appellants strongly contended that even before examining the admissibility of exemption under Notification No. 89/95-C.E. the point to be decided is the excisability of the product, in question. It is the case of the appellant that if it can be established that these goods are not manufactured goods then the question of levy itself will not arise. It is contended that the product, in question, are unwanted/inevitable waste. The value realized by the appellants on such unintended waste by sale, itself is not a criteria to decide the excisability. The Hon'ble Supreme Court in CCE v. Indian Aluminium Company - 2006 (203) E.L.T. 3 (S.C.) held zinc dross and flux skimming are not exigible to central excise duty. Relying on the earlier decisions in Union*

of India v. Indian Aluminium Company Ltd. - 1995 (77) E.L.T. 268 (S.C.) and CCE, Patna v. Tata Iron & Steel Company Ltd. - 2004 (165) E.L.T. 386 (S.C.), the Apex Court held that the dross and skimming arising during the course of manufacture of metal cannot be subjected to excise levy only because it may have some saleable value, observing that the term "manufacture implies a change; every change, however, is not a manufacture". Every change of an article may be the result of treatment, labour and manipulation. The manufacture would imply something more. There must be a transformation; a new and different article must emerge having a descriptive name, character or use (Delhi Cloth and General Mills Company Ltd. - AIR 1963 SC 791 = 1977 (1) E.L.T. (J199) (S.C.). The Apex Court categorically held that dross do not answers the description of "waste and scrap".

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 de-guming and de-waxing. Thereafter by a process of de-acidification/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 along with spent earth, which when present makes the oil as crude refined oil.*

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 No. 89/95-C.E. 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-C.E. This has been pleaded as a alternate argument by the appellant/assessee also.*
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> ***12.*** *As such in view of the above discussion and finding, we note that the appellant/assessee are eligible for exemption under the said notification."*

6.2 The said decision has been upheld by the Hon'ble Supreme Court in the case Commissioner of Central Excise, Chandigarh Vs. Marico Ltd. *(supra)*. The Tribunal in the case of *M/s.* SSD *Oil Mills Company Ltd. vide Final Order No. 41190-41194/2019* dated 29.10.2019 had followed the decision of the Larger Bench and set aside the demands.

6.3 Taking note that the facts and issues are the same and applying the decision as above, we hold that the demand cannot sustain.

7. In the result, the impugned orders are set aside. The appeals are allowed with consequential relief.

(Order dictated in court)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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

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