

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal No. 40450 of 2016
with
Excise Miscellaneous Application No. 40752 of 2024

(Arising out of Order-in-Appeal No. 412/2015 (CXA-II) dated 21.12.2015 passed by Commissioner of Central Excise (Appeals II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. S.V. Sivalinga Nadar & Sons
PB No. 75, No. 866,
Pandit Jawaharlal Nehru Road,
Villupuram – 605 602.

...Appellant

Versus

Commissioner of GST and Central Excise
Puducherry Commissionerate,
No. 1, Goubert Avenue,
Puducherry – 605 001.

...Respondent

APPEARANCE:

For the Appellant : Shri M. Somasundharam, Advocate
Shri T.R. Ramesh, Advocate
For the Respondent : Smt. Anandalakshmi Ganeshram, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40135 / 2025

DATE OF HEARING : 27.11.2024
DATE OF DECISION : 29.01.2025

Order :- Per Mr. VASA SESHAGIRI RAO

Excise Appeal No. E/40450/2016 has been filed by M/s.
S.V. Sivalinga Nadar & Sons (hereinafter referred to as
'Appellant') assailing the impugned Order-in-Appeal dated
21.12.2015 passed by the Commissioner of Central Excise,
Madurai upholding the Orders-in-Original No. 84,85&86/2014-CE

dated 11.08.2014 which had confirmed demands under Section 11 A(2) /11A(10) of Central Excise Act, 1944 (ACT), along with applicable interest and imposing penalty equal to the demand confirmed for the period April 2008 to December 2012, under Section 11AC of Act *ibid*.

2.1 Facts briefly stated are that, the Appellant, a partnership firm engaged in refining crude vegetable oil in to edible oils marketed under the brand name "SVS" were exempt from payment of duty in terms of Notification No.3/2006-CE dated 01.03.2006 (upto 16.03.2012) and as amended by the Notification No. 12/2012 dated 17.03.2012. It appeared to the Department that products *Viz.* "Vegetable Waste Oil/ Soap Stock" and "Wax Gum (dry wax /fly ash)" which emanated during the course of manufacture which were being sold for a consideration to their customers, are dutiable in terms of Section 2(d) of the ACT as they were not exempt under any Notification and they were not discarded as a waste and were marketable commodities .

2.2 Therefore, a Show Cause Notice dated 16.04.2014 was issued to the Appellant proposing to demand duty of Rs.17,39,557/- for the period from April 2008 to December 2012, under Section 11A(4) of the ACT read with Rules 4,5,6 and 8 of Central Excise Rules, 2002 (Rules) along with applicable

interest, besides proposing to impose penalty under Section 11AC of the ACT read with Rule 15(2) of the Rules. Subsequently, two more Show Cause Notices which were dated 26.09.2013 and 16.04.2014 were issued proposing to demand duty of Rs.2,93,450/- and Rs.4,31,780/- for the periods January 2013- July 2013 and August 2013 to March 2014 respectively, along with appropriate interest and to impose penalty. Upon adjudication, the demands were confirmed by holding the goods as dutiable and imposing penalty of Rs.17,91,473/-. Being aggrieved, the Appellant filed an appeal before the lower Appellate authority who upheld the Orders-in-Original while extending cum-duty benefit to the Appellant.

3. The main contentions of the Appellant specified in the Grounds of Appeal have been summarised below: -

- i. It was submitted that the order was unsustainable for the period from 01.04.2008- 09.05.2008 as insertion of explanation to Section 2(d) of the ACT was w.e.f. 10.05.2008.
- ii. It was submitted that the impugned order is liable to be set aside as the demand confirmed in respect of waste oil was under Central Excise Tariff Head (CETH)15220020 as against CETH 15180040 proposed in the SCN as the rate of duty differed. In this regard, it was pointed out that duty demand in SCN was made for 6% as per rates applicable for CETH 15180040 whereas the Tariff head 1522 attracted

duty @ 12% and any fresh notice for such re-classification would be beyond the Show Cause Notice issued. Hence, it was averred that the demand confirmed for Vegetable Waste Oil under CETH 15200020 is wholly unsustainable and liable to be set aside.

- iii. It was averred that the adjudicating authority had mistakenly classified Dry wax/ fly ash under CETH 1521 as the subject heading covered vegetable /other waxes prepared or manufactured from plants, trees, insects and marine mammals like bees wax, insect wax and spermaceti.
- iv. It was submitted that the demand of duty and imposition of penalty were not sustainable as impugned order ignored the claims of the Appellant seeking exemption under Notification no. 89/95-CE dated 18.05.1995 relying on the decisions in the cases of: -
 - a. *CCE Vs. Priyanka Refineries Ltd. [2010 (249) ELT 70 (Tri.)]* which was affirmed by the Hon'ble Supreme court vide order dated 07.01.2010 [2011 (274) ELT A16 SC]
 - b. *A.P. Solvex Ltd. Vs. CCE [2014 (300) ELT A74 SC]* and
 - c. *Maheswari Solvent Extraction Ltd. Vs. CCE [2014 (299) ELT 116 (Tri.-Mum.)]*.
- v. It was further submitted that there was no suppression of facts as there was no conscious or deliberate withholding of information and they were under the *bonafide* belief that the waste items were not excisable under any specific tariff head and reliance was placed in this regard on the

decisions in the case of *CCE Vs. Chemphar Drugs and Laminates* [1989 (40) ELT 276 (SC)], *Padmini Products Vs. CCE* [1989 (43) ELT 195 (SC)] and *CC Vs. Devkumar Kapta* [2014 (301) ELT 167 (Guj)].

4.1 The Ld. Counsels Shri M. Somasundharam and Shri T.R. Ramesh representing the Appellant reiterated their contentions in the grounds of appeal and further submitted that the Appellant would also be eligible for exemption under the Notification No. 08/2003-CE dated 01.03.2003, as amended, even if the Revenue's version of dutiability is accepted, which is being contested in appeal. The total turnover of these products having not exceeded the SSI exemption limit of Rs.150 lakhs they would be eligible for the benefit of SSI exemption Notification and the details of the total turnover are tabulated below: -

Financial year	Turnover on Vegetable Waste Oil	Turnover on Dry Wax	Total turnover
2008-09	11,16,030/-	1,66,300/-	12,82,330/-
2009-10	23,70,682/-	1,61,400/-	25,32,082/-
2010-11	33,09,398/-	2,90,052/-	35,99,450/-
2011-12	57,57,120/-	1,75,815/-	59,32,935/-
2012-13	86,92,389/-*	3,31,535/-**	90,23,924/-
2013-14	90,22,189/-***	43,920/-****	90,66,109/-

Further, it was submitted in this regard that the claim of exemption can be raised at the appellate stage as held by Hon'ble Gujarat High Court in the case of *CST, Ahmedabad Vs. Bacha Finlease* [2016 (343) ELT 108 (Guj.)] and Bangalore Bench of Tribunal in the case of *Sunrise Industries Vs. Commissioner of Central Excise, Bangalore* [2004 (166) ELT 330 (Tri.-Bang.)].

4.2 The Ld. Counsels also submitted that the demand for the period 2008-09 to 2011-12 is barred by limitation and consequently the penalty imposed under Sec.11AC of the Central Excise Act, 1944, would be liable to be set aside as the issue involves classification dispute and also about the excisability, leading to interpretation of relevant entries and the Appellant cannot be accused of indulging in any suppression, warranting invocation of extended period.

4.3 The Ld. Counsels averred that no duty can be demanded on Vegetable waste oil and dry wax as they were not classifiable under any of the Central Excise Tariff Headings being waste products.

4.4 The Ld. Counsels have also contended that the demand confirmed was unsustainable and liable to be set aside as the waste arising during the manufacture of exempted vegetable oil

was exempt *vide* Notification No. 89/95-CE dated 18.05.1995 by placing reliance on the decision of Larger Bench of the Tribunal in the case of *Ricela Health Foods Ltd. Vs. CCE, Chandigarh [2018 (361) ELT 1049 (Tri.-LB)]*, which was upheld by Hon'ble Supreme Court in the case of *CCE, Chandigarh-I vs. Marico Ltd. [2022 (182) ELT 436 (SC)]* and which was also followed in the case of *Kissan Fats Ltd. vs. CCE, Chandigarh-II [2024 (387) ELT 369 (Tri.-Chan.)]*.

5. The Ld. Authorised Representative Smt. Anandalakshmi Ganeshram representing the Department affirmed the findings of the Lower Appellate Authority and submitted that the Appellant is liable to pay duty on clearances of vegetable waste oil and dry wax, in terms of explanation to Section 2(d) of the ACT. The Ld. Authorised Representative has put forth that: -

- i. The bye-products namely "vegetable waste oil / soap stock" and "wax/gum" are falling under Tariff Item Nos. 15220020 and 15211090 of First Schedule to the Central Excise Tariff Act, 1985 respectively. They cannot be treated as part of Tariff Item Nos. 15079010 and 15089091 as they are allotted separate Tariff Item Nos. These bye-products cannot be treated as waste. When a product emerges as a bye-product in the course of manufacture of some other product, that bye-product cannot be treated as waste just because it is an unintended product arising in the course of manufacture

of an intended final product. Besides, these bye-products are not discarded by the company but are sold in the open market to various customers for some consideration.

- ii. The goods soap stock is specifically covered under the Tariff Heading 15220020 in the schedule to Central Excise Tariff Act, 1985. Inasmuch as the soap stock, which is called as waste vegetable oil in common parlance, has got specific entry in the Central Excise Tariff Act, 1985, it is excisable goods. It is admitted by the assessee that the said goods is inedible in nature. Though it is inadvertently mentioned in the notice that the said goods fall under 15180040, the notice at Para 7 had categorically stated that the vegetable waste oil is covered under Chapter 15 of Central Excise Tariff under the relevant chapter subheading. Inasmuch as there is specific entry for soap stock (Waste vegetable oil) under Chapter 15, it is an excisable commodity. Also wrong quoting of a provision cannot vitiate the proceedings of a case as held by the Apex Court in the following cases: -

a. Deccan Cements Ltd. vs. Commissioner [2006 (199) ELT 144 (SC)]

b. Collector of Central Excise, Calcutta vs. Pradyumna Steel Ltd. [1996 (82) ELT 441 (SC)] wherein it was held by the Court that: -

"Mere mention of wrong provision of law when power exercised is available even though under a different provision, is by itself not sufficient to invalidate exercise of that power."

- iii. As per the HSN Explanatory Notes, the Chapter 1521.10 covers vegetable wax, 1521.90 covers Bees wax, other insect wax etc. There is a separate entry for vegetable wax under 1521.10 and hence the dry wax was obtained during the process of refining vegetable oil is classifiable as other vegetable wax under 1521.1090 under Central Excise Tariff, in as much as crude vegetable oil is extracted from the vegetable seeds viz., sunflower seeds, groundnut etc.
- iv. The Notification No. 89/95-CE dated 18.05.1995 exempts waste, parings and scrap arising during the course of manufacture of exempted goods. In order to examine the applicability of the above notification to the goods on hand, it is to be decided whether the disputed goods 'Vegetable Waste Oil/Soap Stock' and 'Wax/Gum' are waste products as claimed by the Appellant or by-products as claimed by the Department. If the said goods can be termed as waste then they would be eligible for exemption from payment of duty under the aforesaid Notification No. 89/95-CE *ibid*. The common dictionary meaning of 'waste' is a material or substance

which is eliminated or discarded as no longer useful or required after the completion of a process. The waste in general is a product with no material value. On the other hand, a by-product is a secondary or incidental product in the process of manufacture. When the process of making one thing results in a second product as well, that second thing is called a bye-product. In the instant case, the goods in question namely 'Vegetable Waste Oil/Soap Stock' and 'Wax/Gum' had arisen during the process of refining of the vegetable oils. Although these goods had arisen unintendently during the process of manufacture, these goods are independent finished goods fetching a market value. It is not in dispute that these goods had been sold by the Appellant for a certain value and hence they cannot be termed as waste and scrap with no value. Therefore, the applicability of Notification No. 89/95-CE which applies only to waste is ruled out in the instant case.

- v. Further, the Ld. Authorised Representative has put forth that the assessee had wilfully suppressed the clearance of the said products with an intention to evade payment of duty by not intimating the said clearance to the Department, though they are a Central Excise registered assessee. They had not made any correspondence with the Department regarding the clearance of these two bye-products without payment of duty. It is only when they were asked by the

Departmental officers, they provided the details of clearance of these two by products. This clearly proved their intention to evade payment of duty by not disclosing the clearance of the disputed goods in question. Hence extended time is sustainable in this case to demand duty and consequently warrants imposition of penalty under Section 11AC of the Act *ibid*. In the instant case the assessee had sold the disputed goods for consideration as seen from the details of sale value these goods provided by them. Viewing from this angle, the case laws quoted by the assesseees are clearly not applicable to the present case.

- vi. The assessee has not brought to the knowledge of the Department the fact of clearance of the said bye-products in any manner. The fact that they have not declared their activity of clearance of bye-products for consideration to various customers establishes their intention to evade Central Excise Duty. Therefore, the extended period of five years under proviso to Section 11(A)/Section 11A (4) of the Central Excise Act, 1944 is sustainable in this case and the penal provisions under Section 11 AC of the Central Excise Act, 1944 are justifiable.

6. We have carefully considered the submissions made by both the sides and also evidences available on records.

7. The issues which arise for determination in this appeal are: -

- i. Whether the products Vegetable Waste Oil / Soap Stock and Dry Wax (gum) arising as bye-products during the course of manufacture of edible refined sunflower oil / groundnut oil are excisable goods or not? and,
- ii. Whether the invocation of extended period is justified in the facts of this appeal?

8. We find that the issue involved in the present appeal pertains to the dutiability of "Vegetable Waste Oil / Soap Stock" and "Wax Gum (dry wax /fly ash)" emerging as products during the course of manufacture of refined edible oil by the Appellant and cleared / sold to customers for a consideration. The Appellant has contended that the soap stock which emerges during the process of refining crude oil is not at all a bye-product but a waste product, while the department is of the view that it is a bye-product emerging during the manufacture, has a distinctive name, character and use and is classifiable under Central Excise Tariff 1522 0020 and marketable and being marketed. Whereas, the Appellant has contended that they are waste products and are eligible for exemption under Notification No. 89/95-CE dated 18.05.1995 and hence, demand is not sustainable.

Further, it was contended that even without going into merits, the Appellant was also exempted under the Notification No. 8/2003-CE dated 01.03.2003, as amended as their total turnover was within the prescribed limits as specified in the said SSI Notification during the disputed period. (Refers para 4.1 *supra*)

9.1 We find the excisability of Soap Stock and Dry Wax / Gum was elaborately discussed in the following cases which are the issues for determination in this appeal. That is to say whether these products have to be treated as bye-products and could be subjected to excise duty or waste products and so to be eligible for exemption benefit of the Notification No. 89/1995-CE dated 18.05.1995 waste, parings and scrap arising during the manufacture of exempted goods: -

(i) In the case of *Commissions of Central Excise, Hyderabad Vs. Priyanka Refineries Ltd. [2010 (249) ELT 70 (Tri.)]* the relevant findings of the Tribunal on the issue of excisability of 'Soap Stock' read as follows: -

"7.2 *On merits we find that the soap stock is a product which arises/emerges during the manufacture of refined vegetable oil. The respondent had always contended before the lower authorities that the soap stock which emerges is not at all a by-product but a **waste product**. It is the contention of the revenue that the soap stock which emerges during the course of manufacture of vegetable oil has a distinctive name, character and use and is specified under Central Excise Tariff 1522 00 20. There is no dispute to the*

finding that the soap stock arises during the refining of edible oil. Just because waste, gets some price it cannot be automatically classified under Central Excise Tariff Heading No. 15.22. We find that the decision of the Supreme Court in the case of Khandelwal Metal & Engg. Works [1985 (20) E.L.T. 222 (S.C.)] would cover the issue in favour of the respondent. We also find strong force in the contention of the learned counsel that the respondents are engaged in the refining of edible oil and are not in the business of manufacturing of a by-product called soap stock. The Revenue's efforts to argue the issue that the soap stock having been found mention in the Chapter 152200 seems to be misplaced as the heading clearly talks about resulting from treatment of fatty substances or animal or vegetable waxes. It is seen that in the case before us, the appellant is not doing this activity but is only refining the edible oil. In view of this, we find that the soap stock which arises/emerges during the refining of vegetable oil is a waste for the respondents, though the Revenue may call it as a by-product. Accordingly, on merits as well as on the law, the Revenue (Appeals) are devoid of merits and are liable to be rejected and we do so"

The above case was affirmed by the Hon'ble Supreme Court in [2011 (274) ELT A16 SC].

(ii) However, in the case of CCE, Jalandhar Vs. A.G. Fats Ltd. [2012 (277) E.L.T. 96 (Tri. - Del.)], the Tribunal has ruled against the assessee and held these products as excisable. The reasoning adopted in the order is as follows: -

"4. *During the period of dispute, by virtue of Chapter Note 6 to Chapter 15 the process of refining of crude vegetable oil was to be treated as process of manufacture. The soap stock/fatty acids, waxes and gums are the by-products which are obtained in the course of manufacture of refined vegetable oil. Each of these by-products has a name, characteristic and uses distinct from the raw material - crude vegetable oil and, hence, the same satisfy the criteria for treating the process as manufacture. The argument of the respondents in appeals at Sl. No. 1 to 6 and of the Appellant in appeals at Sl. No. 7 & 8, that by virtue of Chapter Note 6 to Chapter 15, only the refined oil is to be treated as manufactured product and not the by-products obtained in course of refining is difficult to accept. When a particular process is a process of manufacture under Section 2(f) by virtue of*

some Chapter Note, not only the main product but all the by-products obtained by that process would have to be treated as manufactured product and if the same are covered by some entry in the Central Excise Tariff and are marketable the same would be chargeable to Central Excise Duty. The waxes and gums obtained in course of refining is covered by heading 1522. As regards soap stock, the same would also be covered by Heading 1522, as, as per HSN Explanatory Notes of heading 1522, this heading among other things, covers soap stocks which are the by-product of oil refining, produced by neutralisation of free fatty acids with a base (sodium hydroxide) and consist of mixture of crude soap, natural oils or fats. As regards, fatty acids obtained in course of refining, the same by virtue of Chapter Note 1(e) to Chapter 15 are excluded from the purview of Chapter 15 and the same are specifically covered by Heading 3823. Therefore, each of the three by-products, soap stock/fatty acids, waxes and gums are the manufactured products covered by Central Excise Tariff and since it is not under dispute that the same are marketable, the same have to be treated as excisable product chargeable to Central Excise Duty.

5. The contention of the appellant that each of these by-products have to be treated as fractions of vegetable oil covered under heading 1516 is not acceptable, as, as discussed above, while the waxes, gums and soap stocks obtained in course of refining are covered by Heading 1522, the fatty acids obtained in course of refining are specifically excluded from the purview of Chapter 15 by virtue of Chapter Note 1(e) to Chapter 15 and same are specifically covered by Heading 3823 of Chapter 38. Therefore, the plea that these products are classifiable under Heading 1516 and, hence, are fully exempt from duty under Notification No. 3/06-C.E. is not acceptable.

6. Coming to the main point of dispute as to whether the soap stock/fatty acids, waxes and gums obtained in course of refining of crude vegetable oil can be treated as waste, since this term has not been defined in the Notification or in the Central Excise Act, 1944 or the Rules made thereunder, the meaning of this term has to be understood from the dictionary and judicial pronouncements. However, a distinction has to be made between the term 'by-product' and the term 'waste.' Oxford Advanced Learner's Dictionary defines the term "by-product" as a substance produced during the process of making or destroying something else. Thus, if in course of manufacture of product A, a product B, also emerges in addition to the intended product A, even though there was no intention to manufacture the product B, the product B would be called a by-product. The waste is a

by-product which is of no value or very low value. Larger Bench of the Tribunal in the case of Markfed Vanaspati & Allied Indus v. CCE, Chandigarh reported in [2000 \(116\) E.L.T. 204](#) (Tribunal) after observing that by-product means something of value produced in making the main product or a substance obtained in course of a specific process but not a primary object, has held that the spent earth arising in course of refining of oil, being of no value, is not a new product or a by-product. Though the Tribunal in the case of CCE, Hyderabad v. Priyanka Refineries Ltd. (supra) has held that soap stock arising in course of refining of oil is waste, no reasons have been given for arriving at this conclusion. In this order, the observations of the Tribunal that the decision of Hon'ble Supreme Court in the case of Khandelwal Metal & Engineering Works v. Union of India reported in [1985 \(20\) E.L.T. 222](#) (S.C.) would cover the issue in favour of the respondent are also not correct as the issue involved in the case of Khandelwal Metal & Engineering Works was as to whether the imported brass scrap in form of old and used articles of brass sold as scrap, would attract additional custom duty under Section 3 of the Indian Customs Tariff Act, while the issue involved in the case of CCE, Hyderabad v. Priyanka Refineries Ltd. (supra) was as to whether the soap stock arising in course of refining of crude vegetable oil could be treated as waste for the purpose of Notification No. 89/95-C.E., which is a totally different issue. Just because the appeal filed by the Government against this order of the Tribunal has been dismissed by Hon'ble Supreme Court, the dismissal being a summary dismissal without giving any reasons does not lay down any law as, as held by Hon'ble Supreme Court in a series of judgment in the cases of Goodyear India Ltd. v. State of Haryana reported in 1990 AIR SC 781 and A-One Granite v. State of U.P. reported in 2001 AIR SC 848 summary dismissal of an appeal or a SLP without giving any reasons i.e. a sub silentio decision, does not lay down any law or a binding precedent. When a product emerges as a by-product in course of manufacture of some other product, that by-product cannot be treated as waste just because it is an unintended product arising in course of manufacture of an intended final product. The by-product would be waste only if it is of no value or negligible value something which the manufacture would want to get rid of. No evidence has been produced by the Assessee that the products, in question, are of no value or negligible value, which have to be got rid of. On the contrary, the records indicate that the price of fatty acids, soap stock, waxes and gums is around Rs. 23,000/- per M.T., Rs. 11,000/- to Rs. 13,500/- per M.T., Rs. 10,000/- per M.T. and Rs. 1700 to Rs. 1800 per M.T. respectively. Since the products, in question, have not been shown to be of no value or negligible value which have only to be discarded,

the same would not be eligible for exemption under Notification No. 89/95-C.E"

The above case was also affirmed by the Hon'ble Supreme Court in [2014 (300) ELT A74 SC]. The above case has also distinguished the issue involved in CCE, Hyderabad Vs. Priyanka Refineries Ltd. *supra* relied upon by the Appellant. Thus, two conflicting and divergent decisions were delivered by coordinate Benches of the Tribunal and both affirmed by the Hon'ble Supreme Court. In the case of AG Flats, the Hon'ble Supreme Court also dismissed the review petition filed by the Department.

(iii) But, in the case of *Maheshwari Solvent Extraction Ltd. Versus Commr. of C.EX., NAGPUR* [2014 (299) ELT 116], the Tribunal had discussed the above two conflicting decisions and held as follows: -

"16. *The learned Counsel fairly submitted that there are two conflicting decisions by the Tribunal's Division Benches on the same issue one by the Bangalore Bench in the case of CCE, Hyderabad v. Priyanka Refineries Ltd. - 2010 (249) E.L.T. 70 (Tri.-Bang.) and another by the Delhi Bench in the case of CCE, Jalandhar v. A.G. Flats Ltd. - 2012 (277) E.L.T. 96 (Tri.-Del.). The statutory civil appeals against these decisions were dismissed by the Division Benches of the Apex Court. It appears that even review petition was also dismissed in A.G. Flats. In the case of A.G. Flats, the main argument of learned counsel for the appellant that the waste fetched some price, the same cannot be treated as excisable goods. The Tribunal observed that the waste is a by-product which is of no value or very low value. But the notification clearly says excisable waste which means the waste is having the value.*

17. *However, in view of the authoritative pronouncement in Raipur Manufacturing Co. Ltd. (supra), this difference in view is not of substantial significance.*

18. *It is a well-settled law that in case of conflicting judgments of the co-equal benches/co-ordinate benches, the judgment which states the law accurately has to be followed and mere incidence of time whether the judgments of co-equal benches are earlier or later is hardly relevant. Same view was taken by the Hon'ble Delhi High Court in the case of Smt. Gopa Manish Vora v. Union of India and Anr. reported in WP (Crl) 2444/2006. Thus, the merits of each judgment of the co-ordinate benches of Hon'ble Tribunal need to be examined before following any of the judgments. In view of the wordings of the Notification, read with the law laid down in Raipur Manufacturing Co. Ltd. (supra), it is clear that the view in A.G. Flats (supra), to the effect that "waste", under the Notification, has to refer to goods of no value or of little value, cannot be preferred, as goods of no value would not command any duty at all in the first place. Besides, this would amount to adding words to the Notification where they do not exist.*

19. *Further, in the case of Babu Parasu Kaikadi v. Babu, (2004) 1 SCC 681, the Hon'ble Apex Court observed as under :*

"17. In Govt. of A.P. v. B. Satyanarayana Rao it has been held as follows : (SCC p. 264, para 8)

"The rule of per incuriam can be applied where a Court omits to consider a binding precedent of the same Court or the superior Court rendered on the same issue or where a Court omits to consider any statute while deciding that issue."

18. Furthermore, this Court, while rendering judgment in Dhondiram Tatoba Kadam was bound by its earlier decision of a coordinate Bench in Ramchandra Keshav Adke. We are bound to follow the earlier judgment which is precisely on the point in preference to the later judgment which has been rendered without

adequate argument at the Bar and also without reference to the mandatory provisions of the Act.”

20. *It is well settled law that one additional or different fact may make a world of difference between conclusions in two cases. Therefore, in the case of A.G. Flats (supra) this Tribunal observed that the spent earth arising in course of refining of oil, being of no value, is not a new product or a by-product. Therefore, we are not considering the decision of A.G. Flats (supra) as the same is not spirit of the exemption notification on the basis of which exemption was denied. We, therefore, found that the arguments advanced in the instant case with support of authoritative pronouncements of Apex Court, statutory provisions and the material adduced herein were not available for consideration or not argued before earlier Benches.*

21. *As discussed above on the basis of various judicial pronouncements and the statutory provisions, and the vital additional submissions which are different from the earlier decisions we hold that the appellants are entitled for the benefit of Exemption Notification No. 89/95-C.E., dated 18-5-1995 for clearance of residue in the form of Gums/waxes and Recovered oil/fatty acids.*

22. *With these terms the impugned orders are set aside and the appeals are allowed with consequential relief, if any.”*

(iv) The Larger Bench of the Tribunal in the case of *Ricela Health Foods Ltd. Versus C.CE., Chandigarh, - [2018 (361) ELT 1049 (Tri.-LB)]*, held as follows on the reference mentioned below being made due to conflicting judgements of two coordinate Benches as given below. Finally, the Larger Bench has held as: -

"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 excisable 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.

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."*

The above decision was also affirmed by the Hon'ble Supreme Court reported in [2022 (382) ELT 436 (SC)].

(iv) In the case of *Kissan Fats Ltd. Versus Commissioner of Central Excise, Chandigarh-II* [2024 (387) E.L.T. 369 (Tri.-Chan.)], the Larger Bench decision cited *supra* has been followed wherein it was held as follows: -

"6. *Heard both sides and perused the records of the case. We find that the issues raised in the impugned orders are no longer res integra after the decision of the Larger Bench in the case of M/s. Ricela Health Foods Ltd. (supra). We find that the Larger Bench has observed as follows :*

"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 product 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/deodorization, 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 an alternate argument by the appellant/assessee also.

8. *As submitted by both sides, the above decision of Larger Bench was affirmed by the Hon'ble Supreme Court in the case of M/s. Marico Limited (supra). Coming to the Department's contention that the decision in the case of A.G. Fats (supra), which was affirmed by Hon'ble Supreme Court, was not discussed by the Larger Bench will not be of any avail as the decision in the case of M/s. Marico Limited (supra) is the latest one and requires to be followed, therefore, by following the principles of judicial discipline, we are of the considered opinion that waste, gums, fatty acids etc. arising during the course of manufacture of vegetable oils are eligible for the exemption Notification No. 89/95."*

In compliance with the judicial discipline and in appreciation of the facts obtaining in this appeal and duly following the decisions rendered in the above cases, we are of the view that "Vegetable Waste Oil/ Soap Stock" and "Wax Gum (dry wax /fly ash)" are not excisable goods and so held to be not subjected to any excise duty. These are to be treated as waste products and they are eligible for the benefit of the exemption Notification No. 89/1995-CE dated 18.05.1995.

9.2 As the Appellant is seeking exemption under Notification No. 89/95-CE dated 18.05.1995 treating these products as waste, it would be expedient to reproduce the said Notification, in force during the period of dispute: -

"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 Excise and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest to do so, 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 clearance 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."

9.3 It is clear from the reading of the above Notification, that the following conditions must be satisfied for exemption under this Notification: -

- (i) The goods must be waste, parings and scrap;
- (ii) The waste, parings and scrap must have arisen during the course of manufacture of excisable goods which are exempted goods i.e. goods chargeable to nil rate of duty or the same are fully exempt from duty under an exemption notification other than exemption notification granting full duty exemption based on value or quantity of the goods cleared in a financial year; and
- (iii) Other than the exempted final product no other dutiable excisable goods are manufactured and cleared.

9.4 In this case there is no dispute that the Appellant was manufacturing refined edible oils which were fully exempt from duty under Notification No. 89/95-C.E., dated 18.05.1995 and this unit was not manufacturing any other dutiable final product. The appellant is engaged in converting crude oil into edible oil and the processes undertaken by them are towards this intended final product. For producing refined edible oil, the vegetable waste oils /dry wax available in the crude oils are to be removed. Thereafter by a process of de-acidification/de-odourisation, by distillation the refined edible oil is obtained. As can be seen the vegetable waste oils /dry wax are emerging due to

removal/refining process of crude oil. As already noted the process is to obtain refined edible oil by removing these unwanted products, which when present makes the oil as crude refined oil. Thus, the Appellant is eligible for exemption under Notification No. 89/95-C.E., dated 18.05.1995 being the products generated are waste products.

10. As the Appellant is entitled for availing exemption of the said Notification, we find it immaterial/irrelevant to go into the appropriate classification of the products in terms of central Excise Tariff or to examine the eligibility of SSI Notification. As the duty demand itself does not sustain, consequently the issue of invocation of extended period and the question of imposition of penalty would not arise and need to be determined in the facts of this appeal.

11. In the result, the impugned Order-in-Appeal No. 412/2015 (CXA-II) dated 21.12.2015 is set aside and the Appeal is allowed with consequential benefits, if any, as per law. The Miscellaneous Application also thus stands disposed.

(Order pronounced in open court on 29.01.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)