

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Excise Appeal Nos. 40373-40397 of 2015

(Arising out of Order-in-Appeal Nos.172 to 197/2014 dated 02.12.2014 passed by the Commissioner of Central Excise (Appeals-I) Coimbatore at Madurai, Central Revenue Building, Lal Bhadur Shastri Marg, Madurai 625 002.)

M/s.Edison & Co. (P) Ltd.
181/7, North Cotton Road,
Tuticorin 628 001.

.... Appellant

VERSUS

**The Commissioner of GST &
Central Excise,**
Tirunelveli GST Commissionerate,
Central Revenue Building,
NGO 'A' Colony,
Tirunelveli 627 007.

.... Respondent

APPEARANCE :

Shri N. Viswanathan, Advocate for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

CORAM :

**HON'BLE SHRI P. DINESHA, MEMBER (JUDICIAL)
HON'BLE SHRI VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

FINAL ORDER Nos.40225-40249/2025

**DATE OF HEARING : 11.11.2024
DATE OF DECISION : 17.02.2025**

Per: Shri P. Dinesha

These Appeals arise against various Orders-in-Appeal passed by the Commissioner (Appeals). It is relevant to capture a brief background and hence, the same is considered upon hearing the Id. Advocate and on reading the statement, facts and Grounds of Appeal.

2. Shri N. Viswanathan, Id. Advocate appeared for the Appellant, Shri Anoop Singh, Id. Joint Commissioner appeared for the Respondent.

3. The appellant was engaged in the manufacture of 'Coconut Oil' claimed to be classifiable under Heading 15.13 of CETA, 1985; as per Sl. No. 9 Notification No.06/2006 – CE dated 01.03.2006 and Sl. No.9 of Notification 12/2012 – CE dated 17.03.2012, with 'NIL' rate of duty. It appears that the CBEC issued a Circular No. **145/56/95-CX., dated 31.08.1995** whereby 'Coconut Oil' whether pure or refined and whether packed in small or large containers were to be required to be classified under Heading 1503 as long as the item satisfied the criteria of 'Fixed Vegetable Oil' in Chapter 3 of Chapter 15; if the same is indicated to be meant for application on hair, irrespective of whether the same has undergone process or not, then the 'Coconut Oil' would merit classification under chapter 33. The said circular came to be disturbed vide Budget in 2005 with the introduction of Section 2 in Section IV of CETA, 1985, with effect from 28.02.2005.

4. Vide Circular No. **890/10/2009-CX dated 03.06.2009** the Board narrowed down the scope of earlier

circular and restricted the dispute to 'Edible oil' and 'Pure Coconut Oil or 'Coconut Oil' and instructed its field formation that the 'Coconut Oils' packed in containers upto 200 ml be considered used generally as 'hair oil' and also chose to withdraw its earlier Circular No.**145/56/1995-CX**.

5. Vide **Circular No. 1007/14/2015-CX dated 12.10.2015**, the Board withdrew the above circular [**890/10/2009-CX**] as well, because of the judgment of Hon'ble Apex Court in **Raj Oil Mills'** case - 2015 (318) ELT A37 (SC), **Capital Technologies Ltd.** - 2015 (321) ELT A211 (SC) [effect is that **145/56/1995-CX** remains alive].

6. The above circulars issued by the Board resulted in disputes whereby the manufacturers of 'Coconut Oil' filed several Writ Petitions before High Courts challenging the same and in one of the cases referred to by the appellant in the case of a similarly placed manufacturer namely M/s. VVD & Sons (Pvt.) Limited, Tuticorin, the Hon'ble **High Court of Madras** granted conditional interim stay on 26.10.2009 and the Hon'ble High Court had *inter alia* referred to orders of **Bombay High Court** and **Kerala High Court**. In the meanwhile, it appears that the Revenue officers took up investigation into the matter and as a consequence thereof, issued a SCN to the appellant hearing for the period, March 2005 to January 2010. It is the case of the appellant that the Revenue officers, despite the stay order of the Hon'ble High Court insisted the appellant to make payment of duty. As a result of which, they started depositing money equivalent to Excise Duty as compelled by the officers and that the said SCN was kept pending without adjudication for a number of years. It is the case of the

appellant that they wrote a letter dated 11.11.2013, explaining the reasons for the deposit of money equivalent to duty, though such duty was not payable and hence, the same was to be treated as a payment under protest.

7. It was their case that the Hon'ble High Court vide its Order dated **29.04.2014** in the above Writ Petition resolved the above controversy in so far as the classification of 'Coconut Oil' packed in small packing is concerned, by holding that the same was classifiable under Heading 1503 of CETA, 1985. In fact, the Tribunal also in its Final Order No.638/2008 dated 25.06.2008 (in Appeal No.E/111/2008) in the case of **Madhan Agro Industries (India) Pvt. Ltd. Vs CCE Salem** had also ruled in the same fashion. Further, the Hon'ble High Court had held Circular No.**890/10/2009-CX** as arbitrary and unconstitutional. It is an undisputed fact that the Department was represented in the proceedings before the Hon'ble High Court but in spite of this, the Office having jurisdiction over the appellant in Tuticorin did not bother to follow the directions of the Hon'ble High Court in the above cases or even the order of Chennai Bench in the case of **Madhan Agro Industries** *supra*, which has resulted in serious miscarriage of justice.

8. Refund applications came to be filed on various dates, as placed before us in the Statement of Facts [para 7] and the same is reproduced for convenience:

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7. Details of the claim , date of payment of duty and date of filing the claim are tabulated below.

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Sl.NO	Month and year	Amount of duty in Rs.	Date of payment of duty	Date of filing the claim
1	Sep 2012	1,03,818/	4.10.2012	1.10.2013
2	Oct 2012	1,10,443/	5.11.2012	14.10.2013
3	Nove2012	93,753/	6.12.2012	11.11.2013
4	Dec2012	1,04,178/	9.01.2013	11.11.2013
5	Jan2013	96,263/	6.02.2013	11.11.2013
6	Feb2013 to June 2013	4,88,637/	9.03.2013,5.04.2013, 9.05.2013,5.06.2013 5.07.2013	3.12.2013
Total		9,97,092/		

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Sl.NO	Month and year	Amount of duty in Rs.	Date of payment of duty	Date of filing the claim
1	July 2013 to Oct 2013	4,02,924	07.08.2013, 11.09.2013, 07.10.2013& 07.11.2013	02.04.2014
2	Nov 2013 to Dec 2013	2,71,314	07.12.2013& 10.01.2014	02.04.2014
Total		6,74,238		

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Sl.NO	Month and year	Amount of duty in Rs	Date of payment of duty	Date of filing the claim
1	Jan 2014 to Mar 2014	3,95,815	04.02.2014, 04.03.2014, &03.04.2014	03.07.2014
2	April 2014 & May 2014	2,64,995	05.05.2014, &06.06.2014	03.07.2014
	Total	6,60,810		

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Sl.No	Period	Amount in Rs	Date of the claim
1	Feb10 &Mar 2010	4,62,400	20.12.2013
2	Apr10 &May 2010	4,76,300	12.02.2014
3	Jun201 &July 2010	3,79,191	28.2.2014
4	Aug2010&Sep2010	2,83,216	01.03.2014
5	Oct2010&Nov2010	3,86,419	01.03.2014
6	Dec2010&Jan2011	4,10,772	10.03.2014
7	Feb2011&Mar2011	2,67,583	24.3.2014
	Total	26,65,881	

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Sl.No	Period	Amount in Rs	Date of the claim
1	June 2009 to Oct 2009	16,75,777	31.03.2014
2	Nov 2009 and Dec2009	4,69,569	31.03.2014
3	Jan 2010	2,01,201	31.03.2014
4	Apr2012 to Aug 2012	6,13,027	31.03.2014
	Total	29,59,574	

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Sl.No	Period	Amount in Rs	Date of the claim
1	April2011 to June 2011	4,29,919	01.04.2014
2	July 2011 to Sep 2011	4,64,685	01.04.2014
3	Oct 2011 to Dec 2011	2,33,804	01.04.2014
4	Jan 2012 to March 2012	4,14,920	01.04.2014
	Total	15,43,328	

Most of such claims having been made prior to the Order/Judgment of the Hon’ble High Court *supra* and of course, much prior to the Circular No.**1007/14/2015-CX** dated **12.10.2015** which withdrew the Circular

No.**890/10/2009-CX**. Ironically, the Commissioner (Appeals) has heavily relied upon this Circular No. 890/10/2009-CX, to reject the appeal of the appellant. The case of the appellant, as available from its written submissions filed before the Commissioner (Appeals), are that letters dated 09.07.2009 and 04.08.2009 to them by the Superintendent of Central Excise, Tuticorin city-range are specific to the fact of the appellant's registration and pay Central Excise Duty; when the Superintendent was seized of the matter, visit by the officers of HPU and registering a case against them was itself an intimidation; issue of SCNs not only for those packed in less than 200 ml. but also for the other packages being contrary to Circular No.870/10/2009-CX *supra*, was also a threat. When the orders in **Aiswarya Industries Vs CCE Pondicherry** [2009 (235) ELT 544 (Tri.-Chennai)] and **Marico Industries Vs Union of India** [2012 (282) ELT 180 (Ker.)] were reported, the Commissioner of Central Excise, Tirunelveli issued SCN without being aware of the said orders and hence, the conclusion drawn by the Adjudicating Authority that there was no threat whatsoever, was seriously disputable. Reference was made to a Table at para 10 of the Statement of Facts where the appellant has given details of all such notices issued to them. It was submitted that the dispute of classification of 'Coconut Oil' packed in packages of less than 200 ml. was unresolved right from March, 2005 and hence, to say that the classification was never challenged, was incorrect.

9. It is the further case of the appellant that when the refund applications were filed, the Adjudicating Authority did not even issue SCN, called for a personal hearing and then,

vide respective Orders-in-Original, rejected refund claims as 'time barred' and 'on merit as well', while the Adjudicating Authority has not considered the fact that depositing money equivalent to duty pending adjudication of the above SCNs, not appropriated by the Adjudicating Authority would not partake the character of 'duty'. The said order was therefore challenged before the Commissioner (Appeals) who, without even considering any of the pleas urged by the appellant however, rejected the appeals thereby upholding the rejection of refund claims. It was his further case that an assessee has to know the status of his refund application and hence, it is necessary for the Revenue to issue a SCN thereby showing the reasons for accepting or rejecting their application, which is not done here and hence, the appellant was deprived of opportunity to offer any explanation insofar as the alleged 'delay' was concerned or at least on merits. This has resulted in miscarriage of justice and therefore, the rejection of refund claims as upheld by the Commissioner (Appeals) being not proper, requires to be set aside. It was thus pleaded that strangely the Commissioner (Appeals) has ignored the binding orders of higher judicial fora in the impugned order, without even distinguishing the same.

10. *Per contra*, Sri Anoop Singh, Id. Joint Commissioner, supported the findings of the lower authorities. He would inter alia refer to the findings in OIO wherein the Adjudicating Authority has held that the appellant having not challenged the self-assessment, cannot now question classification and claim refund. Reliance in this regard was

placed on the decision of Apex court in **ITC Limited Vs CCE Kolkata-IV** - 2019 (9) TMI 802 – SUPREME COURT.

11. We have carefully considered the rival contentions, perused the documents placed on record and the judicial precedents relied upon during the course of arguments before us. The only issue that crops up for our consideration is, “whether the rejection of refund claims of the appellant by the Adjudicating Authority is in order”?

12. There is no denial of the facts that what was paid, may be as a ‘deposit’ by the appellant, was an amount equal to the duty element, the appellant itself had classified the ‘Coconut Oil’ pack of less than 200 ml. under Chapter 33 [and not under Chapter 15], there was a serious issue regarding the very classification of ‘Coconut Oil’ below 200 ml. package as the Board had issued Circulars [145, 890, etc.], there were Hon’ble High Court [of Bombay, Kerala & Madras] rulings in support of tax payers and the jurisdictional High Court’s order in W.P dated 29.04.2014 coupled with the dismissal of SLP/Civil Appeal by the Apex Court resulting in the very withdrawal of Circular No. 890/10/2009-CX *supra* by the Government. The Commissioner (Appeals) has relied heavily on this Circular and therefore, when the same is withdrawn, then the same becomes non-est and any order passed following the said Circular also becomes non-est.

13. In the result, there is no justification in rejecting the refund claims since primarily the ground on which rejection was made is itself not there anymore in the statute book and hence, we set aside the impugned orders and allow the appeals with consequential benefits, if any, as per law.

(Order pronounced in the open court on 17.02.2025)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)