

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066  
EXCISE APPEAL BRANCH

Appeal No. E/828 & 822/2005

Date 12/03/2008

Assistant Registrar  
C.E.S.T.A.T, New Delhi

To :  
PRAKASH SOYA LTD.  
VILLAGE-KHEDA, PLTHAMPUR, DISTT. - DHAR  
(M.P.)

2. M/S. PRAKASH SOLVEX  
(UNIT OF PRAKASH OILS LTD)  
VILL. KHEDA,  
PITHAMPUR, DISTT. DHAR (MP)  
Appellant

PRAKASH SOYA LTD.

C.C.E. INDORE

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 83784/08 Excise dated 29-1-08

passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Assistant Registrar  
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE  
452001 (M.P.)

2. Adv. / Consult

SH. R. NAIR, ADV.,  
LAKSHMI VIHAR, AG-192,  
SCHEME NO. 54, VIJAY NAGAR  
INDORE (MP)

3. S.D.R.

~~4. I.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**Excise Appeal Nos. 828 & 822 of 2005**

\*(Arising out of Order-in-Appeal No. IND-I/430 & 431/2004 dated 29.11.2004 passed by the Commissioner of Central Excise (Appeals-I), Indore).

DATE OF HEARING : 29.01.2008

DATE OF DECISION : 29.01.2008

FOR APPROVAL AND SIGNATURE :

**HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT**

**HON'BLE MR. A.K. SRIVASTAVA, MEMBER (TECHNICAL)**

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982 ?.	
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	
3.	Whether their Lordships wish to see the fair copy of the Order ?	
4.	Whether Order is to be circulated to the Departmental Authorities?	

**M/s Prakash Solvex  
M/s Prakash Soya Ltd.**

....

....

**Appellants**

(Rep. by Sh. R. Nair, Adv.)

VERSUS

**CCE, Indore**

....

**Respondent**

(Rep by Sh. C.S. Rajput, DR)

**CORAM :** HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT  
HON'BLE MR. A.K. SRIVASTAVA, MEMBER (T)

Final ORDER NO. 83484/08 dt. 29.1.08

**PER JUSTICE S.N. JHA :**

These two appeals on behalf of M/s Prakash Solvex and M/s Prakash Soya were taken up together and are disposed of by this common order. In Appeal No. E/822/2005 (M/s Prakash Solvex), the appellant has been asked to pay duty of Rs. 11,19,682/- and penalty of Rs. 20,000/-. In Appeal No. E/828/2008 (M/s Prakash Soya Ltd.), the demand is for Rs. 9,00,968/- as excise duty.

2. It may be stated, at the outset, that in the case of M/s Prakash Solvex, the appellant does not dispute the demand to the extent of Rs. 42,427/- as duty leviable on shortage of oil and Rs. 1,02,975/- on clearance of refined edible oil without payment of duty, and likewise in the case of M/s Prakash Soya Ltd. the demand of Rs. 1,02,975/- on clearances of refined edible oil is not in dispute. As a matter of fact, learned counsel for the appellants stated that the said amounts have already been paid by the appellants.

3. The case of the appellants is that, they are entitled to exemption under Notification No. 115/75-CE dated 30.04.1975, as amended from time to time, and the levy of duty is, therefore, unjustified. It is also submitted that the appellant, M/s Prakash Solvex, had paid duty no sooner than it was demanded on the shortage found. The imposition of penalty was, therefore, not warranted.

4. On the main issue as to whether the duty is leviable on fatty acid and residues which are by-products of oil, the appellants

place reliance on a decision of this Tribunal in the case of A.P. Solvex Ltd. vs CCE, Ludhiana, 2005 (192) ELT 292 (T-Del.). It is relevant to mention here that the dispute in these appeals arises from the fact that the appellants besides being engaged in the activity of extraction of oil from oil seeds, also purchased crude oil and refined crude oil from the open market. The dispute arose as to whether the manufacture of oil as a result of refining of the crude oil comes within the ambit of the said Notification dated 30.04.1975. The plea of the Revenue is that crude oil was purchased from outside and there being no production of oil by extraction process from the oil seeds etc., the manufacturers were not entitled to the benefit of the said notification which exempts refined edible oil manufactured by the oil mill and solvent extraction industry. The plea of the Revenue was rejected in the case of A.P. Solvex Ltd. vs CCE, Ludhiana (supra) observing that no such condition had been imposed in the Notification that the entire extraction of raw rice bran oil (which was the subject input in that case), should be carried out in the factory by the manufacturer for claiming exemption from payment of duty on refined edible oil. The Tribunal in conclusion relied upon a decision of the Bangalore Bench in CCE vs Aggarwal Industries Ltd., 2005 (186) ELT 174 (T), as well as a decision of the Apex Court in the case of CCE, Hyderabad vs Sunder Steels Ltd., 2005 (181) ELT 154. In the latter case, it was observed by the Apex Court that the exemption notification cannot be interpreted by adding words to it. As the Notification does not prescribe any condition that 100% production of the product covered under the Notification should be within the factory

of the assessee, the benefit of exemption notification cannot be denied.

5. At this stage, it would be appropriate to quote the above said notification in extenso as under :

**“In exercise of the powers conferred by sub-rule (1) of Rule sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods (other than rubberized coir mattress, [refined edible oil falling under heading no. 15.02, fixed vegetable oils of heading No. 15.03] and vegetable fats and oils of heading no. 15.04) falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), and manufactured in factories covered by any of the industries specified in the Schedule hereto annexed from the whole of the duty of excise leviable thereon.**

#### THE SCHEDULE

1. Coir Industry.
2. Cashew Industry.
3. Tanning Industry.
4. Oil Mill and Solvent Extraction Industry.
5. Rice Mill Industry.”

5. It is clear on interpretation of the above notification in the case of A.P. Solvex Ltd. vs CCE, Ludhiana (supra), which not challenged by the Revenue, that fatty acid or residues, as the case may be, being by-products of the manufacturing process in the appellant's factory, cannot be subjected to levy of excise duty as they are covered by the exemption notification. Faced with the decision in A.P. Solvex Ltd. vs CCE, Ludhiana (supra), the learned DR submitted that the benefit envisaged in the exemption notification is available only in cases where the unit is engaged in the manufacture of oil by process of extraction. In the instant case, it was pointed out

that 97% of the manufacturing activities carried out in the case of M/s Prakash Solvex and 99% in the case of M/s Prakash Soya, involve purchase of crude oil from open market and only negligible quantity involves extraction from fatty acid etc. The appellants not being solvent extraction units, cannot claim the benefit of exemption under the said notification.

6. We do not find any merit in the submission of the learned DR for the simple reason that what is exempted in the notification is the goods (other than especially mentioned therein) manufactured in factories covered by any of the industries specified in the schedule. It is to be kept in mind that the Notification refers to Oil mill and solvent extraction industry which suggests that any goods manufactured in a factory which may qualify as 'Oil Mill Solvent Extraction Industry', is entitled to exemption. In this view of the matter, the fact that the appellant purchased crude oil and by subjecting the same to refining process manufactured oil is immaterial. As observed in the case of A.P. Solvex Ltd. vs CCE, Ludhiana (supra), in the absence of any such condition or stipulation therein, the benefit of exemption will be available to all factories covered by oil mill or solvent extraction industry. The Revenue was, therefore, not justified in imposing duty on the fatty acids and residues which are by-products of the manufacturing process in the factory premises of the appellants.

7. The only question which remains to be considered is whether the imposition of penalty of Rs. 20,000/- in the case of M/s Prakash Solvex was justified. We find substance in the submission of the appellant's counsel that the entire amount of duty having been

paid by the appellant, before the issuance of the show cause notice, penalty should not have been imposed. We accordingly set-aside the penalty portion of the order.

8. In the result, the impugned order of the Commissioner (Appeals) is modified to the extent, indicated above. The appeals are disposed of in the above terms.

(Dictated and pronounced in the open Court on the 29<sup>th</sup> day of January, 2008)

**(JUSTICE S.N. JHA)**  
**(PRESIDENT)**

**(A.K. SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

Golay