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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/3624/2010 - EX[DB] WITH E/S/3428/2010-EX Date **26/04/2011**

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

To :
M/S PARAM INDUSTRIES LTD.,
(NOW KNOWN AS M/S RUCHI SOYA INDUSTRIES LTD.) 301, MAHAKOSH HOUSE, 7/5, SOUTH TUKOGANJ, NATH MANDIR ROAD, INDORE (MP)

M/S PARAM INDUSTRIES LTD., Appellant

Vs

C.C.E. INDORE **STAY ORDER NO.484/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.361/ 2011 EX[DB]** dated 01-4-11 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
MR.RAJESH RAWAL
249, LAWYERS CHAMBERS, HIGH COURT OF INDIA, NEW DELHI.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branc

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:1.4.2011

Stay Application No.3428 of 2010 in
Central Excise Appeal No.3624 of 2010

Arising out of the order in appeal No.IND/209/2010 dated 12/17.08.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Indore.

M/s Param Industries Ltd. .. Appellants

Vs.

C.C.E., Indore .. Respondent

Appearance:

Shri G.L. Rawal with Shri Rahesh Rawal, Advocates for the appellants/applicants
Shri Nitin Anand, Authorised Departmental Representative (DR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Technical Member

STAY Oral Order No. 484/2011-EX

Per Shri Mathew John:

In this case, the appellant is before the Tribunal applying for stay of the demand confirmed by the impugned order. The issue involved in the matter is that the appellants had factory where they were doing solvent extraction of oil and also were doing refining of the oil so obtained. Apart from this, they were obtaining crude oil extracted by solvent extraction method in other factories and refining and clearing the same. They were claiming exemption under Notification No.115/75-CE which provided exemption for goods manufactured in the factory covered by solvent extraction industry.

4. After hearing both sides, it was felt that the appeal itself can be disposed of and therefore, the requirement of pre-deposit has been waived and the

registry is directed to list the case immediately for final hearing after waiving the pre-deposit.

5. Application stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:1.4.2011

Central Excise Appeal No.3624 of 2010

Arising out of the order in appeal No.IND/209/2010 dated 12/17.08.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Indore.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Param Industries Ltd. .. Appellants

Vs.

C.C.E., Indore .. Respondent

Appearance:

Shri G.L. Rawal with Shri Rahesh Rawal, Advocates for the appellants/applicants
Shri Nitin Anand, Authorised Departmental Representative (DR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Technical Member

FINAL Oral Order No. 361/2011-EX

Per Shri Mathew John:

In this case, the appellant is before the Tribunal applying for stay of the demand confirmed by the impugned order. The issue involved is that the appellants had a factory where they were doing solvent extraction of oil and also were doing refining of the oil so obtained. Apart from this, they were obtaining crude oil extracted by solvent extraction method from others and getting it refined and clearing the same. They were claiming exemption under Notification No.115/75 dated 30.4.1975 which provided exemption for goods manufactured in a factory covered by solvent extraction industry.

2. The case made out by the Department is that the appellant is only doing the process of refining and no process of milling/solvent extraction was performed on the impugned goods by the appellant for obtaining the by-products i.e. soya lecithin and oil sludge. Hence it is argued that derived products like soya lecithin and oil sludge cannot be said to be product of Oil Mill/Solvent Extraction Plant. On the basis of such argument, the Commissioner (Appeals) reversed the adjudication order and confirmed duty of Rs.11,88,203/- with equal amount of penalty.

3. The appellants submitted that this issue was considered by the Tribunal in the case **of Prakash Solvex vs. C.C.E., Indore** - 2008 (229) ELT 565 (Tri-Del). The finding in that case is reproduced below:

> ***3. The case of the appellants is that, they are entitled to exemption under Notification No. 115/75-C.E. dated 30-4-1975, 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. v. CCE., Ludhiana [2005 (192) E.L.T. 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 the crude oil obtained 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 30-4-1975. 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. v. 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 v. Aggarwal Industries Ltd., 2005 (186) E.L.T. 174 (T), as well as a decision of the Apex Court in the case of CCE, Hyderabad v. Sunder Steels Ltd., 2005 (181) E.L.T. 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 extento 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. v 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. v. 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. v. 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.

4. Since the matter is already decided by the Tribunal and no new points have been raised by the Department either in the appeal or during the hearing , we do not find any merit in the case made out by the Department and the appeal

deserves to be allowed. Accordingly, the appeal is allowed with consequential benefit.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Technical Member

scd/