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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/334 /2005 - EX[DB] WITH E/CO/151/2006 Date 05/05/2011

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S KRITI INDS. (INDIA) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.383/ 2011 EX[DB]** dated 20-4-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

b 2
Assistant Registra
(Excise Appeal Branch

Copy to :

1. Respondent
M/S KRITI INDS. (INDIA) LTD.
INDL. AREA NO. 3,A.B. ROAD,
DEWAS (M.P.)

2. Adv. / Consult
MR.ASHUTOSH UPADHYAY, ADVOCATE
4, KISHAN COLONY-567, M.G.ROAD, OPPOSITE HIGH COURT, INDORE (M.P.)

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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT

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CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing/decision: 20.04.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	See
4	Whether Order is to be circulated to the Departmental authorities?	Y

Excise Appeal No. 334 of 2005 with C.O. No. 151 of 2006

[Arising out of Order in Appeal No. 379-CE/IND/APPLS-II/2004 dated 03.11.2004 passed by the Commissioner)Appeals-II), Customs & Central Excise (Appeals), Indore].

CCE, Indore — Appellants
[Rep. by Shri V.C. Choudhary, DR]

Vs.

M/s Kriti Industries (India) Limited — Respondent
[Request for adjournment]

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Oral Order No. 383/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the DR for the Revenue, none present for the respondents though served.

2. This appeal arises from order dated 03.11.2004 passed by the Commissioner (Appeals) Indore. By the impugned order, the appeal filed by the respondent against the order of the adjudicating authority was allowed and the order of the adjudicating authority was quashed and set aside.

3. The Assistant Commissioner, Ujjain, by his order dated 09.07.2004 had confirmed the duty demand to the tune of Rs. 1,88,928/- alongwith interest and equal amount of penalty against the respondents.

4. The respondents are engaged in manufacture of de-oiled cake and refined soya oil out of soyabean seeds classifiable under chapter heading 1503 of the Central Excise Tariff Act, 1985. The said product was cleared at nil rate of duty. During the scrutiny of the records of the respondents, the department observed that the respondents had been importing crude soyabean at concessional rate of duty and on refining the same by way of neutralization, bleaching & deodorization was clearing the same without payment of any duty while claiming exemption benefit under Notification No. 115/75-CE dated 30.04.75. Consequent to recording of statement of Assistant Company Secretary of the respondents, a show cause notice dated 22.10.2003 came to be issued to the respondents in relation to the period

from 2000-2001 to 2002-03 requiring the respondents to show cause as to why the duty to the tune of Rs. 1,88,928/- should not be recovered from them in relation to 8.171 MT fatty acide and 53.700 MT acid oil cleared by them without payment of duty, while seeking to deny the benefit of the said notification. The same was contested by the respondents, however, the adjudicating authority rejected the claim sought to be raised by the respondents and confirmed the demand which came to be set aside by the Commissioner (Appeals) under the impugned order. Hence, the present appeal.

5. We have heard the DR and also perused the records with the assistance of DR.

6. The DR while drawing our attention to Notification No. 115/75-CE dated 30.04.75 submitted that taking into consideration the undisputed fact as revealed from the statement of the Assistant Company Secretary and authorised signatory of the respondents and the clear finding arrived at by the adjudicating authority about the process of refining carried out by the respondents, it is evident that the respondent were not entitled to claim benefit of the said notification. According to DR, the notification clearly requires the manufacturer to have one of the industries enlisted in the schedule to the said notification. Considering the process of refining crude oil undertaken by the respondents which did not require any mill or industry, the respondents were not entitled to claim the benefit of the said notification.

7. The notification in question reads as under:

> "**Exemption to products of various specified industries.-** In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods (other than rubberized coir mattresses, 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 Milling Industry
>
> (Notification No. 115/75-CE., dated 30.04.1975 as amended by Notifications No. 122/75-CE., dated 5.5.1975; No. 80/86-CE., dated 10.2.1986; No. 127/88-CE., dated 1.3.1988 and No. 7/98-CE dated 2.6.1998)".

8. Undoubtedly, as submitted on behalf of the department that a manufacturer in order to claim the benefit of exemption under the said notification has to have a factory of one of the types of those described in the schedule appended to the said notification. In the case in hand, it cannot be said that the respondents do not own and possess any of the such factory. In fact, it is the case of the department itself as revealed from the show cause notice issued to the respondents that the respondents are engaged in manufacture of de-oiled cake and refined soya oil out of soyabean seeds. It is the case of the respondents that they have oil mill and solvent industry. Perusal of the order passed by the adjudicating authority, the fact that the respondents do possess such industry was never disputed. The entire dispute which was sought to be raised related to the process undertaken by the respondents in order to deny the benefit of the said notification.

9. In the show cause notice, it was stated that "it appeared that no milling and solvent extraction process is involved in respect of the goods which are imported and subjected to refining only". In the order passed by the adjudicating authority, it was observed that "whereas in the instant the noticee has cleared the fatty acid and acid oils emerged during the process of refining of imported crude oil. Here it is important to note that the crude oil has simply been refined in the unit and no process of milling/ solvent extraction has been done on it". It has been further observed that "refining of the solvent extracted imported crude oil can not be included within the ambit of 'Oil Milling or Solvent Extraction'".

10. Apparently, the entire case of the department against the respondents was that the process undertaken in the factory of the respondents in relation to refining of the crude oil did not include process of milling and, therefore, they were not entitled for the exemption benefit under the said notification. The said notification nowhere relates to the process undertaken by a manufacturer. It requires the manufacturer to have a factory of the description given in the schedule. Whereas it is not disputed that the respondents had oil mill and solvent extraction industry which is one of the industries enlisted in the schedule to the said notification. We do not find any fault in the impugned order granting the benefit of exemption notification to the respondents.

11. The DR has drawn our attention to the decision of the Tribunal in the matter of **Rajadhiraj Industries** vs. **Collector of Central Excise, Indore** reported in 1994 (69) ELT 148 (Tri.), **M.P. Dyechem Industries** vs. **CCE,**