CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 843 of 2012

(Arising out of Order-in-Appeal No. IND/CEX/000/APP/476TO479/111 dated 20.12.2011 passed by the Commissioner of Central Excise (Appeals), Indore)

DATE OF HEARING : 30.03.2017
DATE OF DECISION : 30.03.2017

M/s Laxmi Solvex …. **Appellants**
(Rep by NONE)

VERSUS

CCE, Indore ..... **Respondent**
(Rep. by Sh. G.R. Singh, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 52705/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed against the Order-in-Appeal No. IND/CEX/000/APP/476TO479/111 dated 20.12.2011 passed by the Commissioner of Central Excise (Appeals), Indore. The period in dispute is March 2006 to December 2010.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the manufacture of soya sludge falling under chapter 15.22 of the Central Excise Tariff Act, 1985.

It is the case of the Department that while manufacturing soya sludge, the excise duty was evaded so after issuing of a show cause notice, duty was demanded. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. List revised. None appeared on behalf of the assessee-Appellants. We have heard Shri G.R. Singh, learned DR for the Department, who justified the impugned order.

4. After hearing the learned DR for the Department and on perusal of the record, it appears that an identical issue in the case of co-noitcees – **M/s Kirti Nutrients Ltd., M/s Vippy Industries Ltd. and M/s Dewas Soya Ltd. vs CCE&ST, Indore** [Appeal Nos. E/529, 621 & 664 of 2012], has come up for before this Tribunal and the Tribunal vide Final Order No. 50299-50301/2017 dated 06.01.2017 has set aside the impugned order. Further, the same issue has again come up before this Tribunal in the case of **M/s Ruchi Soya Industries Ltd. vs CCE, Indore,** Final Order No. 52621/2017 dated 28.03.2017, wherein it was observed that :

> "4. After hearing both the sides and on perusal of record, we find that the identical issue has came up before the Tribunal in the assessee's own case for previous period (Final Order No. 55562-55563/2016 dated 18.11.2016) where it was observed that-
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> > "3. The matter of excisability of the item namely Soya Sludge (also called Soya Gum) has been squarely covered by Tribunal's decision in the case of Commissioner of Central Excise, Indore vs. Ambika Refinery 2013 (296) ELT 249 (Tri. Del.)., where the item has not been found excisable and it has been held that the same is not covered under Chapter 15.07 (presently it is Chapter Heading 15.22) under Central Excise Tariff. When it is so, the subject item is not excisable and the appellants are entitled to the relief sought in the appeal.
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> > 4. Accordingly, the appeals are allowed with consequential relief".

5. By following our earlier orders (supra), we set aside the impugned order and allow the appeal.

6. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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