IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 01/06/2017.
DATE OF DECISION : 01/06/2017.

Excise Appeal No. 57444 of 2013

[Arising out of the Order-in-Appeal No. 24/RPR-I/2013 dated 30/01/2013 passed by The Commissioner (Appeals – I), Central Excise & Customs, Raipur.]

M/s Agrawal Channel Mills (P.) Ltd. Appellant

Versus

CCE, Raipur Respondent

Appearance

Shri Kumar Vikram, Advocate – for the appellant.

Shri M.R. Sharma, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53623/2017 Dated : 01/06/2017

Per. Anil Choudhary :-

The issue in this present appeal is whether the duty demanded in respect of sludge cleared which gets settled at the bottom of the storage tank in which furnace oil is stored. As per the learned Commissioner sludge is a dutiable item on the ground that Section 2 (b) of the Act stands amended with effect from 10^{th} May 2008, wherein goods sold in the market are deemed as excisable goods.

2. Heard the parties. We find that the issue herein is settled by the ruling of co-ordinate bench of this Tribunal in **Magnum Ventures vs. CCE, Ghaziabad** reported in **2014 (303) E.L.T. 226 (Tri. – Del.)**, wherein under similar facts and circumstances where duty was demanded under Section 2 (d) of the Act readwith explanation. It provides goods includes any article which is capable of being bought and sold for consideration and shall be deemed to be marketable. It is to be further seen whether said goods emerged as a result of any manufacturing activity as defined under Section 2 (f) of the Act. If, product is not result of manufacture, such explanation relatable to excisability of goods, based on the marketability cannot be used for holding of a product to be result of manufacture, in as much as same not only relates to marketability of product but also criteria of manufacture that excisable goods are those as specified in first schedule and second schedule to the Central Excise Tariff, has to be satisfied. Only thereafter test under explanation ibid would come into picture.

3. We find that the issue herein is squarely covered by the aforementioned ruling and accordingly we allow the appeal and

set aside the impugned order. The appellant is entitled to consequently benefits in accordance with law.

(Order dictated and pronounced in open court.)

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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