CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 1393 of 2012

(Arising out of Order-in-Appeal No. IND/CEX/000/APP/34/12 dated 31.01.2012 passed by the Commissioner of Central Excise (Appeals), Indore.**)**

DATE OF HEARING : 09.08.2017
DATE OF DECISION : 09.08.2017

M/s Prestige Feed Mills Ltd. …. Appellants
(Rep by Sh. Rajesh Rawal, Adv.)

VERSUS

CCE, Indore …. Respondent
(Rep. by Sh. M.R. Sharma, DR)

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

FINAL ORDER NO. 55861/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Appeal No. IND/CEX/000/APP/34/12 dated 31.01.2012 passed by the Commissioner of Central Excise (Appeals), Indore. The period in dispute is October 2007 to June 2011.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the manufacture of refined edible oil falling under Chapter 15 of the Central Excise Tariff Act, 1985. They were manufacturing refined soya oil by extracting crude oil from soya bean seeds. It is the case of the Revenue that the assessee-Appellants were manufacturing and selling 'Soya Sludge' without payment of Central Excise Duty. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri Rajesh Rawal, learned counsel for the assessee-Appellants and Shri M.R. Sharma, learned DR for the Revenue.

4. After hearing both sides and on perusal of the material available on record, it appears that an identical issue has come up before this Tribunal in the case of **Ruchi Soya Indus. Ltd. vs CCE, Indore,** Final Order No. 52621/2017 dated 28.03.2017, wherein relief was granted to the assessee-Appellants by observing 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.

4. Accordingly, the appeals are allowed with consequential relief". "

5. By following our earlier order (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)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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