IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT – IV

Excise Appeal No. E/52742/2018 [DB]

[Arising out of Order-in-Appeal No. 148-149-SJ-CE-JDR-2018 dated 31/05/2018 passed by the Commissioner of CGST & Central Excise, Jodhpur]

Arihant Solvex Pvt Ltd **...Appellant**

Vs.

CGST, C.C. & C.E., Jodhpur 1 **...Respondent**

Present for the Appellant : Mr. Rahul Tangri, Advocate
Present for the Respondent: Mr. R.K. Mishra, DR

Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing / Decision 16.10.2018

FINAL ORDER No. 53337/2018

PER: RACHNA GUPTA

The appellant has challenged the Order of Commissioner(Appeals) bearing No. 148-149 dated 01.06.2018. The facts in brief relevant for the impugned adjudication are that the appellants are engaged in manufacture of refined edible oil falling under Chapter No. 15 of the Schedule to the Central Excise Tariff Act, 1985. Appellants are also engaged in oil refining and manufacturing of gad, sludge, acid oil and spent earth falling under Tariff Item

No. 15211090 and 38231900 respectively of the first Schedule of the said Tariff. Department during a scrutiny observed that the goods manufactured and cleared by the appellants other than refined edible oil are also dutiable goods but the appellant is clearing the same without payment of Central Excise duty under the garb of Notification No. 115/75-CE dated 30.04.1975 despite that the exemption of the said Notification has been withdrawn by the Notification No. 21/2006-CE dated 01.03.2006. Resultantly, two Show Cause Notices dated 05.02.2014 for the period w.e.f. 01.04.2010 to 31.12.2013 demanding a duty of Rs. 46,18,619/- and dated 03.02.2015 for the period 01.01.2014 to 31.12.2014 demanding a duty Rs. 14,74,980/- respectively were served upon the appellant under Section 11A(1) of Central Excise Act, 1944. The interest at appropriate rate and the proportionate penalties were also proposed. The said demand was confirmed vide Order No. 34-35 dated 21.09.2015. Being aggrieved the Appeal was before the Commissioner(Appeals) who vide the Order under challenge had upheld the demand for the normal period of limitation only and the penalty was reduced to Rs. 5 lakhs instead of penalty of Rs. 46,18,619/- + Rs 3 lakhs. Still being aggrieved, the appellant is here before this Tribunal.

2. We have heard Mr. Rahul Tangre, Ld CA for the appellant and Mr. R.K. Mishra, Ld. DR for the Department.

3. It is submitted on behalf of the appellant that both the Show Cause Notices were duly replied by the appellant vide their letters dated 12.03.2014 and 09.02.2015 respectively duly contesting the allegations in both the Show Cause Notices. It was specifically submitted that the goods in question were waste and since the final goods i.e. refined oil was exempted vide Notification No. 3/2006-CE, the goods in question were eligible for exemption under Notification No. 89/95-CE and as such no duty was payable on clearance even of the disputed goods. It is submitted that though the Commissioner(Appeals) has reduced the demand to the normal period and has also reduced the penalty but in fact demand is not sustainable and there appears no reason for imposition of any penalty. The Department is already denied to invoke the extended period of limitation. The Order under challenge is accordingly prayed to be set aside and Appeal is prayed to be allowed. Ld. Counsel has relied upon the decision of this Tribunal in appellants' own case titled as **Arihant Solvex Pvt. Ltd. Vs. CCE, Jaipur 2015(316)ELT 290(Tri.-Del.)**.

4. Per contra, Ld. DR has justified the impugned order impressing upon that Commissioner (Appeals) has been justified and reasonable while appreciating the entire facts and circumstances. There are enough reasons recorded in the Order for not considering the decisions of appellant's own case. Appeal is accordingly prayed to be dismissed.

5. After hearing both the parties and going through the entire record of the present Appeal, we observe and held as follows:-

The admitted fact of the case is that the appellant manufactures refined vegetable oil by processing of crude oil and in course of refining of said crude vegetable oils, gad, sludge, acid oil and spent earth, etc. emerge as unavoidable by-products. During the period of dispute, the refined vegetable oil, the final manufactured products of the appellant was exempted from duty under the exemption Notification No. 3/2006-CE and as such was to be treated as exempted goods. Accordingly, the only point of dispute is:

"whether for the purpose of exemption Notification No. 89/95–CE dated 18.05.1995 which exempt wastage parings and scrap arising in course of manufacture of exempted goods falling within the Schedule to Central Excise Tariff Act from the whole of the duty of excise leviable thereon, the impugned by-products are to be treated as waste or not."

6. This issue has been dealt with by this Tribunal in **Ricela Health Foods Ltd. Vs. CCE, Chandigarh & Allahabad 2016 (331) ELT 313 (Tri. – Del.)** wherein vide the interim Order No. 8-11/2018 dated 30.01.2018 it was held that the removal of unwanted materials resulting in products like gum, fatty acid and wax (as therein) cannot be called as the process of manufacture of these products and the same cannot be

considered to be manufactured excisable goods. It was further held that same were merely waste and thus eligible for exemption under Notification No. 89/95-CE. The relevant provision of the Order is as follows:-

> *"11. ....While no general guidelines can be laid down to decide when a product will be treated as a waste or a by product, in the present set of facts the products under consideration are clearly not in the nature of by products emerging during the course of manufacture. The process of manufacturing refined vegetable oil is essentially by removing the unwanted materials that were present in the crude vegetable oil so that a refined vegetable oil can be obtained. In this process of refining, the unwanted materials are removed. Hence, we are of the considered view that the removal of unwanted materials resulting in products like gums, waxes and fatty acid with odour cannot be called as a process of manufacture of these gums, waxes and fatty acid with odour. The process of manufacture is for refined rice bran oil.* ***As such, we note that these incidental products are nothing but waste arising during course of refining of rice bran oil and applying the ratio of Apex court, as discussed above, these cannot be considered as manufactured excisable goods.*** *Noting that the reference is to decide whether these are to be treated as waste for the purpose of exemption Notification 89/95-CE we note though the excisability of the product itself is seriously in dispute as per the opinion expressed by us, as above,* ***these cannot be considered as anything other than waste and as such will be covered by the exemption Notification No. 89/95-CE.****"*

In a prior decision in the case of **CCE, Hyderabad Vs. Priyanka Refineries Ltd. 2010 (249) ELT 70 (Tri. – Bang.)** has also held that the goods like gum, sludge, etc. are merely the waste. The said decision has been upheld by Hon'ble Supreme Court in the Appeal cited as **2011 (274) ELT**

A16(S.C.). In the appellants own case as relied upon by the appellant, the relevant portion is as follows:-

> *"4. We have considered the facts of the case and the appellants' contention. The Hon'ble Supreme Court in the case of Markfed Vanaspati & Allied Indus. (supra) has held that spent earth remained earth even after the processing and therefore no duty is leviable on spent earth. It is also seen that in the case of Maheshwari Solvent Extraction Ltd. (supra), the Hon'ble CESTAT held that impurities consisting of gums, waxes and fatty acids are eligible for the benefit of Notification No. 89/95-CE. Similarly, in the case of* ***CCE, Hyderabad Vs Shree Siddhi Vinayaka Agro Extractions P. Ltd. 2010-TIOL-183-CESTAT-BANG.*** *the Hon'ble CESTAT held that soap stock and wax emerging during process of manufacture of vegetable refined oil is waste and not a by-product and is therefore, eligible for the benefit of Notification No. 89/95."*

The goods in dispute herein i.e. gad (gum), sludge(soap stock), acid oil and spent earth merely emerge during the manufacture of refined oil and are completely unintentional by products. Hence, they do not classify the definition of manufactured excisable goods. Since refined oil was exempted good during the relevant period, these by-products are entitled to be treated as exempted by virtue of Notification No. 89/95-CE. The moot controversy therefore stands decided in affirmative.

Further, we observe that Ld. Commissioner has already dropped the demand for the extended period. However, while confirming the demand for the normal period, he has relied upon **M/s AG Fats and Ors. 2012 (277) ELT 96 (Tri. – Del.)** but the said matter received a contradictory opinion in **Maheshwari Solvent Extraction Ltd. Case 2014 (299) ELT 116 (Tri. – Mum.).** It is thereafter that the Larger Bench of this Tribunal in Ricela Health Foods Ltd. (supra) has overruled the decision of M/s AG Fats and Ors. We are therefore of the opinion that Commissioner(Appeals) has not followed the judicial discipline properly. The Order confirming the demand even for the normal period is therefore not sustainable. Same is hereby set aside and the Appeal stands allowed.

[Operative part pronounced in the open Court]

(C.L. MAHAR)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.