CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Appeal No. E/30431/2017

(Arising out of Order-in-Appeal No. HYD-EXCUS-002-APP-041-16-17 dt.30.12.2016 passed by CCCE & ST (Appeals), Hyderabad)

M/s Priyanka Refineries Pvt Ltd Unit II
Survey No. 479 P, 480 Pm 481 P, 482 P,
Mankhal Village, Maheswaram Mandal,
Ranga Reddy Dist., Telangana – 501 359 **......Appellant**

VERSUS

Commissioner of Central Excise, Customs & Service Tax – Hyderabad - II
Kendriya Shulk Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad, Telangana – 500 004 **......Respondent**

Appearance
Present for the Appellant: Shri B. Venugopal, Advocate
Present for the Respondent: Shri G.V. Ramanaiah Shetty, Authorized Representative.

Coram:

HON'BLE MS. SULEKHA BEEVI C.S, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30578/2019

Date of Hearing: 17.06.2019
Date of Decision: 17.06.2019

[Order per: P. VENKATA SUBBA RAO]

1. This appeal is filed against the Order-in-Appeal No. HYD-EXCUS-002-APP-041-16-17 dated 30.12.2016.

2. Heard both sides and perused the records.

3. The facts of the case in brief are that the appellant herein is engaged in refining crude vegetable oil into refined vegetable oil which is their final product and is exempted. During the process, certain other products viz., gums, spent earth/ wax/ fatty oil, etc., emerge which they sell to soap

manufacturers for consideration. They were not paying Central Excise duty on these products. It is the case of the revenue that these goods merit classification under Central Excise Tariff Heading 1522 00 20 and 1522 00 90 and are liable to Central Excise duty. The assessee, however, did not pay the Central Excise duty claiming the benefit of exemption notification 89/1995 dated 18.05.1995 which exempts "waste, parings and scrap" arising in the course of manufacture of exempted goods and falling within the schedule to the Central Excise Tariff Act, 1985. The case of the revenue is that these products are by-products and not waste or parings or scrap and are therefore not entitled to the benefit of exemption notification 89/1995-CE. It is the case of the appellant that these goods are, in fact, waste and they have no intention of manufacturing these products and they arise in the process of refining crude vegetable oil. Therefore, they are fully covered by the exemption notification 89/1995-CE. There is no dispute regarding the marketability of these products or that they have actually been marketed. There is also no dispute that the goods fall under Central Excise Tariff. The show cause notice was issued on 01.06.2015 covering the period May, 2014 to July, 2014 demanding Central Excise duty of Rs.4,36,550/- on these products under Sec.11A of the Central Excise Act along with interest under Sec.11AA. It was also proposed to impose a penalty upon them under Rule 25 of Central Excise Rules, 2002. After following due process, the lower authority confirmed the demand as proposed along with interest and imposed a penalty of equal amount under Rule 25 of Central Excise Rules, 2002.

4. Aggrieved, the appellant appealed before the first appellate authority who set aside the penalty imposed under Rule 25 but confirmed the demand raised. Hence, this appeal.

5. Learned counsel for the appellant submits that the short point to be decided is whether or not the gum/ wax/ fatty oils etc., which arise during the refining of vegetable oil, are liable to Central Excise duty or are exempted by notification 89/1995-CE as waste products arising during the course of manufacture of exempted products. He would submit that this issue is no more *res integra* as it was decided by the Larger Bench of the Tribunal in Ricela Health Foods Ltd [2018 (361) ELT 1049 (Tri-LB)]. He

would draw the attention of the bench to Paras 11, 12 & 13 of this judgment which are as follows:

> *"11. The thrust of the arguments by the Revenue is that when a product is capable of being sold for a significant consideration the same cannot be considered as waste. We are unable to accept such summary presumption. Admittedly, in chemical and metallurgical industry when the raw materials are processed with an intended purpose of manufacturing certain final products by a chemical reaction, refining, melting etc. multiple products will result. These products either emerged in the final stage or any of the intermediating stages also. The point for consideration is whether these are to be considered as manufactured goods for excise levy based on the statutory definition for manufacture or should be considered as manufactured goods based on the likely value they may command while selling. We are clear that the value that a product may or may not fetch cannot be a determinative factor to decide whether the same is a manufactured final product/by-product or a waste/refuse arising during the course of manufacture of final products. This much is clear from the ratio of the Apex Court decision in Indian Aluminium Co. (supra). 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 No. 89/95-C.E. 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-C.E. This has been pleaded as a alternate argument by the appellant/assessee also.*
>
> *12. As such in view of the above discussion and finding, we note that the appellant/assessee are eligible for exemption under the said notification.*
>
> *13. The appeal files are returned, with the above findings, to the regular Division Bench for decision on the points raised in the respective appeals."*

6. He would therefore urge that the ratio laid down by the Larger Bench may be followed and the demand may be set aside.

7. Learned departmental representative reiterates the findings of the lower authorities and asserts that these products are in the nature of by-products and not in the nature of waste and scrap and therefore are not entitled to the benefit of exemption notification 89/1995-CE.

8. We have considered the arguments on both sides and find that the issue in hand is identical to the issue before the Larger Bench of the Tribunal in the case of Ricela Health Foods Ltd (supra). The short point to be decided is whether the fatty acids/ wax/ gums, etc., which arise while crude

vegetable oil is refined should be considered as waste or as by-product. If these are considered as waste, they are covered by exemption notification 89/1995-CE. If, on the other hand, these are considered as by-products, as asserted by the department, they are not entitled to the benefit of this notification. The matter has been decided by the Larger Bench of the Tribunal in Ricela Health Foods (supra) and it has been held that these products are not intentionally manufactured but only arise during the process of refining of crude vegetable oil and therefore should be considered as waste and they are entitled to the benefit of exemption notification 89/1995-CE. Respectfully following the decision of the Larger Bench, we hold that the impugned order is unsustainable and liable to be set aside and we do so.

9. The appeal is allowed and the impugned order is set aside.

(operative Part of this order was pronounced in the open court on conclusion of hearing)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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