

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76181 of 2014

(Arising out of Order-in-Original No.14-15/MP/COMMR./2014 dated 06.06.2014 passed by Commissioner, Central Excise & Service Tax, Patna.)

**M/s. Deepak Vegpro Private Limited,
Vanaspati Division**

(Near Durgawati Railway Station, Durgawati, Dist.Kaimur, Bihar-821105.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Patna

.....Respondent

(Central Revenue Building (Annex) Building, Beer Chand Patel Path, Patna-800001.)

WITH

Excise Appeal No.75902 of 2016

(Arising out of Order-in-Appeal No.1044/Pat/CEX/Appeal/2016 dated 15.03.2016 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Patna.)

**M/s. Deepak Vegpro Private Limited,
Vanaspati Division**

(Near Durgawati Railway Station, Durgawati, Dist.Kaimur, Bihar-821105.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Patna

.....Respondent

(Central Revenue Building (Annex) Building, Beer Chand Patel Path, Patna-800001.)

APPEARANCE

Shri R.S.Bajaj, Chartered Accountant for the Appellant (s)

Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)

HON'BLE SHRI P.ANJANI KUMAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 75245-75246/2022

DATE OF HEARING : 8 December 2021

DATE OF DECISION : 04 May 2022

P.K.CHOUDHARY :

Since both the Appeals involve common issues, they are taken up together for disposal.

2. The facts of the case in brief are that the Appellant is a manufacturer of refined palm oil and Vanaspati ghee classifiable under CETH 15 16 2029. That, in order to make the final product marketable and to facilitate handling, the Appellant had in-house facility for manufacture of empty tins and HDPE jars for packing of its final product. The empty tins and HDPE jars manufactured in-house were captively consumed/used in the packing of its final products. The Appellant had been availing exemption from excise duty thereof under Notification No.10/96-CE dated 23.07.1996, which extends exemption to all goods if the same are consumed within the factory of their production in the manufacture of goods specified in the table wherein all goods classifiable under Chapter 15 (except 1571 10 22, 1520 00 00, 1521 and 1522) were specified under Sl.No.1 of the said table. The Appellant was eligible for benefits of exemption under Notification No.89/1995-CE dated 18.05.1995. In the Show Cause Notice dated 07.05.2013 issued to the Appellant, the Commissioner of Central Excise & Service Tax, Patna had alleged that by wrongly availing benefit of Notification No.89/1995-CE dated 18.05.1995, the Appellant had removed 'fatty acid' without payment of appropriate duty during the period from 10.05.2008 to 31.10.2012, which was otherwise liable for payment of duty. The entire dispute is detailed as below:-

Excise Appeal No.76181 of 2014

Period Involved	Show Cause Notice	Order-in-Original
10.05.2008 to 31.10.2012	V-07/Gaya/SCN- Cell/Adjn/2013/2002 dated 07.05.2013	14- 15/MP/Commr./2014 dated 06.06.2014.
November 2012 to October 2013	V-35/Gaya/SCN- Cell/Adjn/2013/5225 dated 29.11.2013	-do-

Excise Appeal No.75902 of 2016

Period Involved	Show Cause Notice	Order-in-Original	Order-in-Appeal
November 2013 to August 2014	V-26/Gaya/SCN- Cell/Adjn/2014/00 76 dated 10.11.2014	09/MP/Commr. /2015 dated 30.12.2015.	1044/Pat/CEX/ Appeal/2016 dated 15.03.2016

3. Shri R.S.Bajaj, Ld.Counsel, appearing on behalf of the Appellant has submitted that the issue is no longer *res integra* in view of the decision of the Larger Bench of the Tribunal in the case of Ricela Health Foods Ltd. Vs. CCE, Chandigarh, Allahabad [2018 (361) E.L.T. 1049 (Tri.LB)], wherein the Tribunal has applied the ratio as laid down by Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Indian Aluminium Co. Ltd. [2006 (203) E.L.T. 3 (SC)] and held that these incidental products are nothing, but wastes arising during the course of refining of palm oil and cannot be considered as manufactured excisable goods and that these wastes will also be covered by the exemption Notification No.89/1995-CE. It is further submitted that 'fatty acid' is not manufactured as excisable goods from 'crude palm oil', rather it is the waste arising in the course of manufacture of vanaspati ghee/refined palm oil. He further submitted that the Adjudicating authority has mis-applied himself by stating that the HDPE jars/empty tins manufactured are excisable goods and hence the benefit of exemption Notification No.89/1995-CE is to be denied. It is the case of Appellants that the HDPE jars/empty tins manufactured are also exempted goods in terms of Notification No.10/1996-CE dated 23.07.1996.

4. Shri S.S.Chattopadhyay, Ld.Authorized Representative for the department justified the impugned orders.

5. Heard both sides through video conferencing and perused the Appeal records.

6. We find that the Appellants are engaged in the manufacture of vanaspati/refined palm oil. They are importing crude palm oil at nil rate of duty in terms of Sl.No.30-II(A) of Notification No.21/2002-CUS dated 01.03.2002 as amended by Notification No.42/2008-CUS dated 01.04.2008. We find that 'fatty acid' is not manufactured as excisable goods from crude palm oil, rather it is waste arising in the course of manufacture. We find that the Ld.Commissioner has erred in finding that they are not eligible for the benefit of Notification No.89/1995-CE because they are manufacturing tin containers/HDPE jars as submitted

by the Ld. Counsel for the Appellants. The Ld. Commissioner has not appreciated the fact that the tin containers/HDPE jars manufactured are also eligible for exemption under Notification No.10/1996 as submitted by the Appellant. We find that the case is no longer *res integra*. The Larger Bench of the Tribunal in the case of Ricela Health Foods (supra) has held as under:-

“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."

7. We find that the instant case is squarely covered by the above cited decision of the Larger Bench. We hold that the Appellants are entitled to exemption contained in Notification No.89/1995-CE on the products which arise incidentally to the manufacture of vegetable oils. We find that the impugned order misplaced itself and the findings vis-à-vis tin containers/HDPE jars manufactured and captively consumed in the factory.

8. In view of the above discussions, the impugned orders cannot be sustained and are therefore set aside. Accordingly, the Appeals, filed by the Appellants are allowed with consequential relief, as per law.

(Order pronounced in the open court on 04 May 2022.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(P.ANJANI KUMAR)
MEMBER (TECHNICAL)