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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76943 of 2019

(Arising out of Order-in-Appeal No.724/HWH/CE/2018-19 dated 18.03.2019 passed by Commissioner of Central Excise (Appeals), Kolkata-II.)

M/s. Krishna Technochem Private Limited
(Vill & P.O.-Kanduah, Sulati, P.S.-Sankrail, Howrah-711302.)

...Appellant

VERSUS

Commissioner of CGST & CX, Howrah Commissionerate

.....Respondent

(M.S. Building, 2nd Floor, 15/1, Strand Road, Kolkata-700001.)

APPEARANCE

Shri Rajesh Chhibber, Advocate 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. 75431/2022

DATE OF HEARING : 15 June 2022
DATE OF DECISION : 15 June 2022

P.K.CHOUDHARY :

M/s. Krishna Technochem Pvt.Ltd. (hereinafter referred to as the 'Appellant') is engaged in the manufacture and sale of Organic Composite Solvant, Solvant Oil (OCS) on which Central Excise duty has been paid by classifying them under Tariff Sub-Heading 3814 00 10 of the Central Excise Tariff Act, 1985. Show Cause Notice dated 18.03.2014 was issued alleging contraventions of provisions of Rule 4, Rule 6, Rule 7 and Rule 8 of the Central Excise Rules, 2002. The Show Cause Notice also alleged that the Appellant cleared total quantity of 5,73,300 ltrs. of Industrial Solvant Oil (Organic Composite Solvant) by short paying Rs.5,46,172/- during the period from March 2013 to November 2013 by mis-classifying the said finished goods under Sub-Heading No.3814 00 10 as against the proper classification of Sub-

Heading No.2710 12 90 under the Central Excise Tariff Act, 1985. The Adjudicating authority vide Order-in-Original dated 23.03.2018 confirmed the demand as proposed in the Show Cause Notice along with applicable interest and also imposed equal penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. On appeal, the Ld.Commissioner(Appeals) upheld the adjudication order and dismissed the Appeal filed by the Appellant. Hence the present Appeal before the Tribunal.

2. The Ld.Advocate, appearing on behalf of the Appellant, submitted that on the self-same issue two Show Cause Notices were issued earlier which were adjudicated upon by the Order-in-Original No.01/Commissioner/CE/Haldia/Adjn/2010 dated 07.01.2010. Against the aforesaid order the Appellant filed an Appeal before the Tribunal and the Tribunal vide Final Order No.77087-77089/2019 dated 25.09.2019 allowed the Appeal filed by the Appellant. Against the Tribunal's order, the department preferred appeal before the Hon'ble Supreme Court vide Civil Appeal Nos.4-6 of 2022. The Hon'ble Supreme Court decided the Appeal on 03.01.2022 reported as 2022 (379) E.L.T. 273 (S.C.) and upheld the order passed by the Tribunal and dismissed the Appeals filed by the Appellant department.

3. It is the case of the Appellant that the present proceedings are on the self-same issue for the subsequent period. This fact has also been recorded in the Show Cause Notice dated 18.03.2014 in Para 2.1 (Page 62 of the Appeal Paper Book). This fact has again been re-produced by the Adjudicating Authority in Para 1.2 of the Order-in-Original dated 23.03.2018.

4. The Ld.Advocate vehemently argued that when the issue of classification has already been settled for the earlier period and the present Appeal involves identical issue, the judgement of the Hon'ble Supreme Court in the Appellant's own case is to be followed.

5. The Ld. Authorized Representative for the Department justified the impugned orders and reiterated the discussions and findings recorded therein.

6. Heard both sides and perused the appeal records.

7. We find that the issue is no more *res integra* and the Tribunal vide Final Order No.77087-77089/2019 dated 25.09.2019 has already discussed the issue elaborately and passed a detailed order. The relevant paragraphs are reproduced for ready reference :-

> *"8. Further, in the instant case, sole reliance has been placed by the Ld. Commissioner on the Chemical Examiner's report. As rightly pointed out by the Ld. Advocate that, in the testing report it has been stated that the sample drawn from the appellant's premises is liquid containing mixture of hydrocarbons having distillation range from 35 degree to 58 degree Celsius and flash point below 25 degree Celsius. The classification adopted by the Ld. Commissioner is not in consonance with the Note no. 4 to Chapter 27 of the Tariff which states that "Light Oil and Preparations" are those of which 90% or more by volume (incl. losses) distilled at 210 degree Celsius, whereas the Chemical Examiner has stated that the range of distillation of product is 35 degree to 58 degree Celsius which is much below 210 degree Celsius. Hence the classification under chapter 271011 cannot be adopted. Similar observations have been made by the Tribunal in the aforesaid decision.*
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> *9. In view of the aforesaid, the classification adopted by the Ld. Commissioner cannot be approved and hence, the entire duty demand, interest and penalty are set aside and the appeals are allowed with consequential relief. The personal penalty imposed on Sri Bindhyachal Singh, Accountant, is also set aside."*

8. We further find that against the aforesaid order of the Tribunal dated 25.09.2019, the Department filed appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court in Civil Appeal No.4-6 of 2022 decided the Appeal on 03.01.2022, dismissed the Department's Appeal and upheld the order of the Tribunal. The relevant paragraphs are re-produced for ready reference:-

> ***"2.*** *We have heard Mr. Balbir Singh, Learned ASG appearing on behalf of the appellant. We have gone through the impugned judgment*

and order passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, (for short "the Tribunal") more particularly, the reasoning given in para 8. We have also considered the sub-heading notes and as per the said sub-heading notes, for the purposes of sub-heading 2710-12, "Light Oils and Preparations" are those of which 90% or more by volume (including losses) distilled at 210 degree Celsius.

3. *In the present case, even as per the Chemical Examiner's Report, the range of distillation of the product in question was between 35 degree to 58 degree Celsius which is much below 210 degree Celsius and the word used in sub-heading notes referred to herein above is "at" and not "up to". Therefore, we see no reason to interfere with the impugned order(s) passed by the Tribunal.*

4. *The present appeals are, accordingly, dismissed."*

9. In view of the above discussions, we find that the facts of the present Appeal before us are squarely covered by the judgement of the Hon'ble Supreme Court in the Appellant's own case. Accordingly, the impugned orders cannot be sustained and are set aside. The Appeal, filed by the Appellant, is allowed with consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open Court.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(P.ANJANI KUMAR)
MEMBER (TECHNICAL)

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