

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Excise Appeal No.75452 of 2016

(Arising out of Order-in-Original No.04/Commr./CE/Kol-II/Adjn/2015-16 dated 18.12.2015 passed by Commissioner of CGST & Central Excise, Kolkata)

M/s Induss Food Products & Equipments Limited

(Sudharas Food Park, 2nd Phase, Plot No.F-17, PS-Sankrail, Dist.-Howrah, Pin-711302)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata

(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

Shri J.P.Khaitan, Sr.Advocate & S/Shri Saurabh Bagaria & Indranil Banerjee and Ms.Samrita Das, all Advocates for the Appellant

Shri D.Sue & S.K.Jha, Authorized Representatives for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77058/2025

DATE OF HEARING : 23 JULY 2025

DATE OF DECISION : 23 JULY 2025

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is a manufacturer of paddy parboiling unit and dryer unit for rice mills and clearing the same classifying under Chapter 8437 of the Central Excise Tariff Act, 1985.

2.1 The Revenue is of the view that the said machineries are classified under Chapter 8419 of the Central Excise Tariff Act, 1985.

2.2 Therefore, proceedings were initiated for the appellant vide issuance of show-cause notice dated 19.08.2014 for the period 1st June, 2009 to 18th May, 2014.

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2.3 The matter was adjudicated. The goods in question held to be classified under Central Excise Tariff Heading 8419 demanding duty from the appellant.

2.4 Aggrieved from the said order, the appellant is before us.

3. The Id.Sr.Advocate for the appellant submits that that the issue involved in this matter is covered by the decision of this Tribunal in the case of Jyoti Sales Corporation Vs. Commissioner of Central Excise & Service Tax, Panchkula reported in 2020 (374) ELT 936 (Tri.-Chandigarh). He further submits that in this case the demand has been raised upto 18th May, 2014 whereas this Tribunal has held that prior to 15th May, 2014, no demand is sustainable. He also submits that the impugned goods has been classified under Chapter Heading 8437 of the Central Excise Tariff Act, 1985. He further submits that the appellant has made certain clearance on 15th May, 2014, but no clearance has been made by them on 16th, 17th & 18th May, 2014. It is his submission that as the CBEC Circular No.982/06/2014-CX dated 15.05.2014, has been issued on 15.05.2014, therefore, for the period prior to that, the demand is not sustainable, but it is his submission that for the clearance made by the appellant on 15.05.2014 also, the demand is not sustainable. To support his contention, he relies on the decision of the Hon'ble Supreme Court in the case of Suchitra Components Ltd. Vs. Commissioner of Central Excise, Guntur reported in 2007 (208) ELT 321 (SC). He further submits that in the case of Rajesh Jain Vs.Union of India reported in 2008 (232) ELT 376 (CAT). Therefore, he prays that the demand for clearance on 15.05.2014, is also not sustainable.

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4. On the other hand, the Id.A.R. for the Revenue, supported the impugned order and particularly, he submits that as the Circular has been issued on 15.05.2014 and this Tribunal in the case of Jyoti Sales Corporation (Supra), has categorically held that prior to 15.05.2014, the goods are to be classified under Chapter Heading 8437 of the Central Excise Tariff Act, 1985, but from 15.05.2014 onwards, it is classified under Chapter Heading 8419. Therefore, the correct classification for the clearance on 15.05.2014 is under Chapter Heading 8419, accordingly, for the clearance of the said day, the appellant is liable to pay duty.

5. Heard both the parties and considered the submissions.

6. As discussed in the case of Dulichand Technico, where this Tribunal has observed as under :

"6. We find that the issue of classification has been examined by this Tribunal and this Tribunal held that for the period prior to 15.05.2014, if the appellants have classified the products in question under Chapter 8437 of the Central Excise Tariff Heading, 1985, no demand is sustainable in terms of CBEC Circular No.924/14/2010 dated 19.05.2010. Therefore, following the such decision, we hold that the appellant has correctly classified the goods under Chapter 8437 of the Central Excise Tariff Heading, 1985. Consequently, no demand is sustainable against the appellant.

7. In view of this, we set aside the impugned order and allow the appellant with consequential relief, if any."

7. Therefore, we hold that for the period prior to 15.05.2014, the merit classification of the goods in question is under Chapter Heading

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8437 of the Central Excise Tariff Act, 1985 and no demand is sustainable.

8. Now, we come to the fact that for the clearance made by the appellant on 15th May, 2014, whether the appellant is liable to pay duty or not ?

9. We find that the Circular has been issued by the Department only on 15th May, 2014, but time of issuance of show-cause notice is not available. In that circumstances, relying on the decision in the case of Rajesh Jain (supra), wherein the Hon'ble Tribunal (CAT) has held as under :

"18. In the light of above, the Apex Court while interpreting computation of period in a case where under the Representation of the People Act, Section 81 on presentation of petition when lays down presentation by an elector within 45 days from a particular date. While relying upon the Section 9 of the General Clauses Act, 1897, which provides for commencement and termination of time in any Central Act or Regulation, if the words 'from' and 'to' are used, the first day is to be excluded and last date is to be included. In the context of above, in Tarun Prasad Chatterjee's case (supra), following observations have been made :-

"7. This question came up for consideration in K. Venkateswara Rao v. Bakkam Narasimha Reddi, AIR 1969 SC 872, and it was held that Sections 9 and 10 of the General Clauses Act would apply in computing the period of limitation under Sec. 81(1) of the R.P. Act, 1951. It was observed in Para 20 at page 879 as under :-

"It is to be noted, however, that even though the Indian Limitation Act, 1963 does not apply to an election petition,

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provisions like Section 9 and 10 of the General Clauses Act, 1897 providing for computation of time which are in pari materia with Sections 12(1) and 4 of the Limitation Act would apply to such a petition."

8. In Manohar Joshi v. Nitin Bhaurao Patil, AIR 1996 SC 796, (1996 AIR SCW 145), this question was dealt with in detail and this Court held that Sec. 10 of the General Clauses Act is applicable to the presentation of election petition. [See also : H.H. Raja Harinder Singh v. S. Karnail Singh, AIR 1957 SC 271; Hukumdev Narain Yadav v. Lalit Narain Mishra, AIR 1974 SC 480; Simhadri Satya Narayana Rao v. M. Budda Prasad, 1994 Supp (1) SCC 449)].

9. So there cannot be any dispute to the proposition that Sec. 9 of the General Clauses Act would apply in computing the period of limitation under Sec. 81(1) of the R.P. Act, 1951. However, the contention urged by the learned counsel for the appellant in this case is that even if it is held that Sec. 9 has an application to a petition filed under Sec. 81(1) of the R.P. Act, 1951, it could be applied only in appropriate cases and is not to be applied universally. The contention of the appellant is that in view of the specific language employed in Sec. 81(1) of the R.P. Act, 1951, the words "within" and "from" used therein would indicate that Sec. 9 has no application. It was also urged that the legislative mandate is that the election petition should be filed within 45 days from the date of election of the returned candidate and not earlier than the said date or after 45 days of the said date. On these premises, it was argued that Sec. 9 has no application in the instant case.

10. Section 9 of the General Clauses Act, 1897 gives statutory recognition to the well-established principle applicable to the construction of statutes that ordinarily in computing the period of

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time prescribed, the rule observed is to exclude the first and include the last day.

11. In Halsbury Laws of England, 37th Edition, Volume 3, page 92, it is stated as follows :-

"Days included or excluded - When a period of time running from a given day or even to another day or event is prescribed by law or fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as "from such a day" or "until such a day" are equivocal, since they do not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day."

12. Section 9 says that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any period of time, to use the word "to". The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word "from" is used indicating the beginning, the opening days is to be excluded and if the last day is to be excluded the word "to" is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of

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insurance has to be good for one day from the 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable time to lay claim, unless the 1st January is excluded from the period of computation.

13. It was argued that the language used in Sec. 81(1) that "within forty-five days from, but not earlier than the date of election of the returned candidate" expresses a different intention and Sec. 9 of the General Clauses Act has no application. We do not find any force in this contention. In order to apply Sec. 9, the first condition to be fulfilled is whether a prescribed period is fixed "from" a particular point. When the period is marked by terminus a quo and terminus ad quem, the canon of interpretation envisaged and Sec. 9 of the General Clauses Act, 1897 require to exclude the first day. The words "from" and "within" used in Sec. 81(1) of the R.P. Act, 1951 do not express any contrary intention.

19. *Applying the aforesaid ratio, which clearly discerns that if the import of Section 9 is satisfied and while word 'from' may not be a definite conclusion but if within 45 days, a time limit as to the condition has to be initiated in its time limit from a particular day that have to be excluded. Applying the aforesaid to the advertisement issued where the applications have been directed as follows:-*

"Should reach within 45 " days of the date of publication of this notice."

20. *The word 'of' has to be read as 'from' the period first is marked by terminus a quo and terminus ad quem. No intention contrary to the General Clauses under Section 9 having been expressed the day of publication of the notification i.e. 3-9-2007 has to be excluded and as such, the limitation of 45 days when expired on 18-10-2007, the applicant, by virtue of his date of*

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birthday, has completed 45 years in age on 8-10-2007 and being the last date of application, he certainly fulfilled the eligibility criteria and has a legal, indefeasible right to be considered in the selection for the post of Judicial Member, CESTAT."

10. In view of this, we hold that the date of publication of the Circular dated 15.05.2014 is to be excluded. Therefore, for the clearance made by the appellant on 15.05.2014, we hold that the appellant is not liable to pay duty.

11. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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