

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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.77266 of 2018
Excise Appeal No.77267 of 2018
Excise Appeal No.77268 of 2018

(Arising out of Order-in-Appeal Nos.18-20/Kol.V/2018 dated 21.02.2018 passed by Commissioner (Appeals) of CGST & Central Excise, Kolkata)

M/s Budge Budge Refineries Ltd.

(23B,A.M. Ghosh Road, Budge Budge, Dist.-24 Parganas (South),Pin-700137

Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata South

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

Respondent

APPEARANCE :

Shri Arijit Chakraborty, Advocate for the Appellant

Shri P.Das, Authorized Representative for the Respondent

CORAM:

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

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

FINAL ORDER NO.77925-77927/2025

DATE OF HEARING : 10 DECEMBER 2025

DATE OF DECISION : 10 DECEMBER 2025

Per Ashok Jindal :

The issue in all the three appeals is common. Accordingly, the same are being disposed of by a common order.

2. The appellants are in appeals against the impugned order wherein in all the three appeals, the entire demand of duty of Rs.3,53,287/- has been confirmed along with equivalent amount of penalty.

3. The facts of the case are that the appellants are engaged in the manufacture and clearance of Refined Palm Oil falling under Chapter No.1511 9010 of the First Schedule to the Central Excise Tariff Act, 1985. They did not manufacture Fatty Acid in their factory but in course of manufacture Refined Palm Oil, Palm Fatty Acid generates automatically. Such generation of Fatty Acid is technological emergence

Excise Appeal Nos.77266-77268 of 2018

of waste. The appellants also manufacture plastic and tin containers classifiable under Chapter Nos.39 and 80 respectively of the First Schedule to the Central Excise Tariff Act, 1985, in their factory. Such containers are used for packing of refined palm oil and such containers are cleared along with refined palm oil as packing materials.

3.1 The show-cause notice was issued to the appellant on 10.09.2015 alleging that the appellant has failed to pay Central Excise duty on the waste and scrap generated during manufacture of plastic/tin containers, which were consumed captively in packing and sale of their finished product, i.e. Refined Palm Oil, which was attracting nil rate of duty and the appellant is not entitled for the benefit of Notification No.89/95-CE dated 18.05.1995 since Fatty Acid generated as by-product during manufacture of Fined Palm Oil, is subjected to Central Excise duty considering the same as "manufacture".

3.2 The matter was adjudicated. The demand of Excise duty was confirmed along with equivalent amount of penalty.

3.3 Being aggrieved, the appellants are before us.

4. The Id.Counsel for the appellant submits that the entire findings of the Id.Commissioner (Appeals) is based on the decision of this Tribunal in the case of Commissioner of Central Excise, Jalandhar Vs. A.G.Flats Ltd. reported in 2012 (277) ELT 96 (Tri.Del.) as maintained by the Hon'ble Supreme Court of India wherein it was held that three by-products being soap stock/fatty acid, waxes and gums are

Excise Appeal Nos.77266-77268 of 2018

manufactured products and to be treated as excisable product chargeable to Central Excise duty.

4.1 He further submits that the present issue is no more res-integra that Fatty Acid, Waxes and Gum arising in course of manufacture of Refined Vegetable Oil, cannot be considered as manufactured product and the benefit of Notification No.89/95-CE dated 18.05.1995 is available on such by products in terms of the Larger Bench decision of this Tribunal in the case of Ricela Health Foods Ltd. Vs. Commissioner of Central Excise, Chandigarh, Allahabad reported in 2018 (361) ELT 1049 (Tri-LB).

5. The Id.A.R. supported the impugned order.

6. Heard both sides and considered the submissions.

7. We find that the issue involved in this case is that whether the fatty acid, waxes and gums arising in the course of manufacture of refined vegetable oil can be considered as manufactured products and the benefit of Notification No.89/95-CE dated 18.05.1995 is available on such products or not ? The said issue has been decided by the Larger Bench of this Tribunal in the case of Ricela Health Foods Ltd. Vs. Commissioner of Central Excise, Chandigarh,Allahabad reported in 2018 (361) ELT 1049 (Tri.-LB) wherein it has been held that during the manufacture of waste and scrap i.e. fatty acids, wax and gum, the refined vegetable oil cannot be subjected to any Central Excise duty under Notification No.89/95-CE dated 18.05.1995.

Excise Appeal Nos.77266-77268 of 2018

8. In view of the above, we do not find any merit in the in the impugned order. Accordingly, the same are set aside. Accordingly, the appeals are allowed with consequential relief, if any.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

mm