CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 86513 of 2013

(Arising out of Order-in-Appeal No. PVR/279-280/NGP/2012 dated 31.12.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Nagpur.)

Maheshwari Solvent Extraction Ltd. ....Appellant
Laxmipur, Khamri
Gondia, Maharashtra – 441 601.

VERSUS

Commissioner of Central Excise, Nagpur ....Respondent
GST Bhavan, Civil Lines,
Telangkhedi Road, Nagpur,
Maharashtra – 440 001.

WITH

Excise Appeal No. 88688 of 2013

(Arising out of Order-in-Appeal No. PVR/279-280/NGP/2012 dated 31.12.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Nagpur.)

Maheshwari Solvent Extraction Ltd. ....Appellant
Laxmipur, Khamri
Gondia, Maharashtra – 441 601.

VERSUS

Commissioner of Central Excise, Nagpur ....Respondent
GST Bhavan, Civil Lines,
Telangkhedi Road, Nagpur,
Maharashtra – 440 001.

APPERANCE:

Shri V. Rama Rao, Advocate for the Appellant
Shri P. K. Acharya, Superintendent, alongwith Shri Xavier R. Mascarenhas, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85687-85688/2023

Date of Hearing: 28.03.2023
Date of Decision: 28.03.2023

PER: ***Dr. Suvendu Kumar Pati***

Denial of exemption Notification No. 89/95-CE dated 18.05.1995 by which excisable goods, being waste generated during the preparation of final product namely Rice Bran Oil Product, is the issue in these two appeals.

2. Brief fact of the case is that appellant was engaged in manufacturing of refined edible oil i.e. Rice Bran Oil falling under Chapter No. 15 of the Central Excise Traffic Act, 1985 that attracted 'Nil' rate of duty. In the course of manufacturing, gums and recovered oil were generated. Those fall under Chapter Heading No. 15220020 and 15220090 of the first schedule Central Excise Tariff Act, 1985. Appellant was issued to show-cause notices with duty demand on those by-products from August, 2008 to January, 2009 and from December, 2009 to July, 2010 with duty demand of 16% of Excise duty under Section 3 of the Central Excise Act as the goods were distinctly classifiable, marketable and excisable. Appellant contested the same, suffered adjudication that confirmed duty demand interest and penalty, preferred appeal that was rejected for non-payment of pre-deposit as determined by the Commissioner (Appeals), got remand order from the CESTAT for redetermination of appeal and ultimately lost his claims in both the appeals as the Commissioner (Appeals) had confirmed the duty demand etc. *Vide* his above referred

orders. Appellant is before us challenging the legality of the order passed by the Commissioner (Appeals).

3. We have heard submissions from both the sides and persue the case record. Learned Counsel for the Appellant placed his reliance on the case law of *M/s. Ricela Health Foods Ltd. & Ors. Vs. CCE, Chandigarh*, Allahabad Excise Appeals No. 653, 3585 of 2012 and 60685, 60723 of 2013 (Larger Bench) and in its own case reported in *2014 (299) E.L.T. 116 (Tri. – Bom.)* dated 13.05.2013 to argue that the issue is no more *res integra* that would require further analysis at Tribunal's level. Learned Authorised Representative argued in support of the findings of the Commissioner (Appeals) regarding capability of the product being marketable etc.

4. We have pursued the case records and found that for a different period, Appellant's appeal was allowed by this Tribunal in extending benefit of exemption under Notification No. 89/95-CE and holding that the same would apply to the waste namely Gums & Recovered Oil etc. The same issue is also settled in the case of *M/s. Ricela Health Foods Ltd cited supra* by the Larger Bench of this Tribunal. Further the issue has attended finality by rejection of appeal in the case of *Commissioner of Central Excise, Chandigarh-I Vs. Marico Ltd*. reported in *2022 (382) E.L.T. 436 (SC)* by the Hon'ble Supreme Court in confirming the order passed by this Tribunal permitting exemption of

products like Fatty Acids, Wax and Gum arising in the course of manufacture of refined vegetable oil, as those are waste and not manufactured products and allowing availment of Notification No. 89/95-CE, by way of dismissal of appeal of the Commissioner of Central Excise, Chandigarh-I. In carrying forward the judicial precedent we pass the following order.

THE ORDER

4. The appeals are allowed and orders passed by the Commissioner of Customs & Central Excise (Appeals), Nagpur *vide* Order-in-Appeal No. PVR/279-280/NGP/2012 dated 31.12.2012 and Appeal Nos. E/86513/2013 & E/88688/2013 are hereby set aside, with consequential relief, if any.

(Operative portion of the order pronounce in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Sujeet