CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86357 of 2015
In
Excise Cross-Objection No. 91144 of 2015

(Arising out of Order-in-Original No. 01/MAK (01) COMMR/RGD/2015-16 dated 29.04.2015 passed by the Commissioner of Central Excise & Customs, Raigad)

AAK India Pvt. Ltd. .... **Appellant**
Earlier known was Kamani Oil Industries Pvt. Ltd.
Village Honad, Post- Sajgaon Talkai – Andoshi Khopoli,
Dist – Raigad, Maharashtra – 410 203.

VERSUS

Commissioner of Central Excise And Service Tax, Raigad .... **Respondent**
Plot No.1, Sector – 17, Khandeshwar,
Navi Mumbai – 410206.

APPEARANCE:

Shri V. Sridharan, Senior Advocate a/w Shri Rajesh Ostwal, Advocate for the appellants
Shri Dinesh Nanal, Authorized Representative for the Revenue

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85716/2025

Date of Hearing: 01.04.2025
Date of Decision: 01.04.2025

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants are engaged *inter alia,* in the manufacture of Sunflower Oil, Refined Palm Oil, etc., falling under Chapter 15 of the First Schedule to the Central Excise Tariff Act, 1985. During the course of manufacture of the said final products, Refined Bleached Deodorized Palm Stearin (RBD), Palm Stearin and Hydrogenated Palm Stearin (HPS) emerged as by-products, which the appellants use to clear from their factory premises, without payment of Central Excise Duty. Non-payment of Central Excise Duty during the disputed period on those by-products was objected to by the department on the ground that the said by-products are excisable commodity and are liable to Central Excise Duty on their removal from the factory premises. On the basis of such understanding, show cause proceedings were initiated by the department, seeking for confirmation of the duty demand in respect of such by-products removed from the factory. The show cause notice (SCN) dated 27.03.2014 issued in this regard was adjudicated upon vide the impugned order dated 29.04.2015 by the Ld. Principal Commissioner of Central Excise and Customs (Mumbai), wherein the proposals made in the SCN were confirmed. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Learned Senior Advocate appearing for the appellants submitted that on removal of the by-products viz., RBD and HPS, the appellants did not pay central excise duty, owing to the reasons that by virtue of their classification under sub-heading Nos. 1511 9090 and 1516 2099 respectively, were exempted from payment of Central Excise duty in terms of Notification No. 3/2006-C.E. dated 01.03.2006; that the CBEC vide Circular No. 81/2002-Cus., dated 03.12.2002 had also classified the disputed goods under Chapter heading 15.11, when the same was obtained through fractional means; and that the classification of those goods under Tariff Item 1511 9090 and 1516 2099 respectively, were also endorsed by the Tribunal in the case of *Gokul Enterprises Vs. Commissioner of Customs, Jamnagar* - 2009 (235) E.L.T. 529 (Tri.-Ahmd), and *Jocil Ltd. Vs. Commissioner of Central Excise* - 2009 (244) E.L.T. 69 (Tri.-Bang).He further submitted that the classification in respect of the subject goods i.e., whether to be classified under Chapter 15 or Chapter 38, was under dispute and against the order passed by the Tribunal in the case of Jocil Ltd. (supra), classifying the same under Chapter 15, Revenue has filed the Civil Appeal before the Hon'ble Supreme Court, which was disposed of vide judgement dated 15.12.2010 [2011 (263) E.L.T. 9 (S.C.)] in favour of Revenue, holding that the product should be classifiable under Chapter 38. Thus, learned Senior Counsel submitted that as a result of resolution of the classification dispute by the Hon'ble Supreme Court, the appellants had started paying Central Excise duty on removal of the said by-products after

the period April 2011 *suo moto*. With regard to the impugned order passed in the present case, he has submitted that extended period of limitation cannot be invoked for effecting recovery of the Central Excise duty inasmuch as there is no element of suppression, mis-statement, fraud etc., with the intention to defraud the Government Revenue. Thus, he has pleaded that the show cause proceedings initiated by the department is barred by limitation of time as per the *proviso* to sub-section (1) of Section 11A of the Central Excise Act, 1944.

3. On the other hand, Ld. Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. Classification of RBD and HPS is under dispute in the present appeal. The appellants had claimed the classification of the said goods under Sub-heading Nos. 1511 9090 and 1516 2099 respectively, which does not attract payment of Central Excise duty, when removed from the factory. However, the department did not agree to such classification and has asserted that the appropriate classification should be under Sub-heading Nos. 3823 1112 and 3823 1190 respectively, which attract payment of Central Excise duty. The CBEC in the Circular No. 81/2002-Customs dated 03.12.2002 has classified Palm Stearin under Chapter heading 15.11, when the same is obtained through fractionation process and classified the same under Chapter heading 38.23, when obtained through the Hydrolytic splitting process. Since, the by-products were obtained by the appellants through the fractionation process, they had claimed the classification of the goods under Chapter 15, which is in consonance with the circular dated 03.12.2002 (supra). With regard to the dispute in classification of the subject goods, we find that this Tribunal, in the case of *Gokul Enterprises* (supra) and *Jocil Ltd.* (supra) has taken the view that the product should appropriately be classifiable under Chapter 15. However, the classification dispute in the case of *Jocil Ltd.* (supra) was differed with by the Hon'ble Supreme Court in the case of *Jocil Ltd.* (supra), by holding that the Palm Stearin to be classifiable under Chapter 38. Since, the classification issue was finally resolved by the Hon'ble Supreme Court in the case of *Jocil Ltd.*

(supra), the appellants had started paying the Central Excise duty, *suo moto,* w.e.f. April 2011.

6. The period in dispute, involved in the present appeal is from November 2009 to March 2011. The Show Cause Notice (SCN) was issued by the department to the appellants on 23.03.2014, seeking for confirmation of the duty demand. The provisions for recovery of non-levied, non-paid, short levied or short paid duties are contained in Section 11A of the Central Excise Act, 1944. The statutory provisions existed at the material time reads as under:

> "*11(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder a Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :*
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> ***Provided*** *that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with an intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" were substituted."*

7. On reading of the above quoted statutory provisions, it transpires that any amount, if lawfully required to be recovered, then the same can be given effect to, by way of issuance of show cause notice within the normal period of one year from the relevant date. In other words, issuance of notice within one year is the rule. However, an exception has been carved out for consideration of such normal period (one year), in the *proviso* appended to sub-section (1) in Section 11A *ibid*, providing that in case of non-payment, short payment of duties etc., owing to the reasons of fraud; or collusion; or any wilful mis-statement; or suppression of facts; or contravention of the provisions of the Central Excise Act or the Rules made there under with intent to evade payment of duty, then in place of the normal period of 'one year', the Central Excise Officer shall, within 'five

years' from the relevant date, shall serve the notice on the assessee, calling upon him as to why he should not pay the amount specified in the notice.

8. In the case in hand, it is an admitted fact on record that the CBEC in the Circular dated 03.12.2002 had classified the disputed goods under heading 15.11, which was subsequently withdrawn vide Circular No. 31/2011-Customs dated 26.07.2011, pursuant to the judgment of Hon'ble Supreme Court, delivered in the case of *Jocil Ltd.* (supra). Further, we also find that the Tribunal in the case of *Gokul Enterprises* (supra) and *Jocil Ltd.* (supra) had also taken the view that the product in question should appropriately be classifiable under Chapter Heading 15.11 of the Tariff Act, 1985. Thus, it is evident that there was confusion, during the material time, with regard to classification of the disputed goods, for the purpose of levy and payment of central excise duty. Further, from the available records, it transpires that the appellants had issued the Central Excise invoices in respect of the clearances made of the disputed by-products from their factory. In other words, there was proper documentation in support of generation of such by-products in the manufacturing process and removal of the same from the factory premises. Thus, under such circumstances, we are of the considered opinion that the extended period of the limitation cannot be invoked for confirmation of the adjudged demands on the appellants inasmuch as there is no element of suppression, wilful mis-statement, fraud etc., on the part of the appellants, with an intent to evade payment of Central Excise duty. We find that the department had not specifically brought out any evidence to show that non-payment of Central Excise duty by the appellants was due to the reason of any fraudulent activities, with intent to defraud the Government Revenue. Furthermore, we also find that the issue arising out the present dispute with regard to initiation of the show cause proceedings by invoking the extended period of limitation, was dealt with by the Co-ordinate Bench of the Tribunal in the case of *Cargill India Vs. Commissioner of Central Excise.* Vide Final Order No. A/85981/2024 dated 27.09.2024 and Final Order No. A/12231/2024 dated 27.09.2024, wherein the Tribunal has allowed the appeal in favour of the assessee, by holding that the extended period of limitation cannot be invoked for confirmation of the duty demands. The relevant paragraph in the order dated 27.09.2024 (Excise Appeal No.10941 of 2018) is extracted herein below:

"4. We have considered the rival submissions. The issue involves demand of Central Excise duty on PS cleared by the appellant during the period June 2009 to July 2010. A show cause notice has been issued on 28.06.2014 demanding duty on PS by classifying the same under heading 3823. It is not in dispute that during the period June 2009 to July 2010, the CBIC had issued Circular No. 81/2002-Cus dated 03.12.2002 wherein it was clearly held that PS would be classifiable under chapter 15 and not under Chapter 38. The said Circular was withdrawn only after the decision of Hon'ble Apex Court in the case of Jocil (supra) vide Circular No. 31/2011-Cus dated 26.07.2011. In these facts and circumstances, it is apparent that even CBIC at the material time held a view that the goods are classifiable under Chapter 15 and not under Chapter 38 therefore. The bonafides of the appellant, therefore, cannot be doubted. In these circumstances, we do not find any merit in invocation of extended period of limitation to demand Central Excise duty, interest and to impose penalty under Section 11C. The Show Cause Notice is therefore, set aside on account of limitation. The appeal is allowed."

9. In view of the forgoing discussions and analysis, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands by invoking the extended period of limitation. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants on the ground of limitation, with consequential relief, if any, as per law.

10. Cross-Objection stands deposed of.

(Dictated and pronounced in open Court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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