(2018) 04 UK CK 0059

In the Uttarakhand High Court

Case No : Central Excise Appeal No. 21 of 2018

COMMISSIONER OF CUSTOMS, SERVICE TAX AND CENTRAL EXCISE, DEHRADUN. — APPELLANT

Vs

M/S FENA PVT. LTD. — RESPONDENT

Date of Decision : 16-04-2018

Acts Referred:
Central Excise Act, 1944 — Section 5A
Central Excise Rules, 1944 — Section 8(1)

Citation : (2018) 04 UK CK 0059

Hon'ble Judges : K.M. JOSEPH, C.J, SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Shobhit Saharia

Final Decision : Dismissed

Judgement

K.M. JOSEPH, C.J

1.Â By the order impugned, the Tribunal has dismissed the appeal filed by the appellant and has affirmed the order passed by the Commissioner

(Appeals).Â The question, which fell before the Commissioner, was, inter alia, whether Spent Sulphuric Acid being generated as a by-product during

the manufacture of Acid Slurry, is dutiable or not in the wake of the Notification No. 89 of 1995 dated 18.05.1995 for a unit enjoying areabased

exemption under Notification No. 50 of 2003 dated 10.06.2003.Â Â

2. The Commissioner (Appeals) took the view, inter alia, as follows:

â??5.3 Notification No. 89/95-CE dated 18.05.1995 issued under section 5A of CEA 1944 exempts waste, parings and scrap arising in the course of

manufacture of exempted goods and falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1985), from the whole of the duty of excise leviable thereon Provided that nothing contained in this notification shall apply to waste, parings and scrap cleared from a factory in which any

other excisable goods other than exempted goods are also manufactured.Â

The explanation to the notification, however reads here as under:-

â??For the purpose of this notification, the expression â??exempted goodsâ? means excisable goods which are chargeable to â??Nilâ? rate of duty

or, are exempted from the whole of the duty of excise leviable thereon by any other notification (not being a notification where exemption from the

whole of duty of excise is granted based upon the value or quantity of clearances made in a financial year) issued under sub-rule (1) of rule 8 of the

Central Excise Rules, 1944 or sub-section (1) of section 5A of the said Act.â??

3. The Commissioner went on to find that, since all the ingredients of the Notification are met in the instant case, there was no infirmity in holding that

the respondent was entitled to avail the benefit of exemption under Notification No. 89 of 1995 dated 18.05.1995.Â Â

4. The substantial question of law, which is sought to be raised by the appellant in this case, is as follows:

â??In the light of the Apex Courts ruling dated 02.01.2002 in the Civil Appeal filed by A.P. Solvex Ltd. against the CESTAT Final Order given by

Tribunal â?" New Delhi, in the case of CCE Jallandhar Vs. A.G. Flats Ltd., 2012 (277) E.L.T. 96 (Tri.-Del.) that: â??When particular process is a

process of manufacture by virtue of chapter note, not only main product, but all the by-products would be treated as manufactured productsâ?; can

Spent Sulphuric Acid, a by-product emerging during the process of manufacture of Acid Slurry, be still be treated as waste, scrap and pairings for the

simple reason that it was an unintended produce?â??

5. We are of the view that the question, which may arise, is a question which relates to the entitlement of the respondent under Notification No. 89 of

1995, which is issued under Section 5A and, therefore, is an exemption Notification.Â In the light of our judgment rendered in Central Excise Appeal

No. 10 of 2015 (Commissioner of Central Excise & Service Tax vs. M/s Tirupati LPG Industries Ltd.) and connected cases, we are of the view that

the appeal is to be dismissed as not maintainable.Â Â

6. Accordingly, the appeal is dismissed as not maintainable.Â This will be without prejudice to the right of the appellant seeking relief in the

appropriate forum.Â Â Â

