(2021) 09 CESTAT CK 0065

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 21589 Of 2014, 31049 Of 2016, 31118, 31119, 30983 Of 2017

M/s Lohiya Industries APPELLANT

Vs

Commissioner Of Customs, Central Excise And Service Tax Hyderabad IV Commissionerate RESPONDENT

Date of Decision : 29-09-2021

Acts Referred:
Central Excise Act, 1944 — Section 2(d), 2(f)

Citation : (2021) 09 CESTAT CK 0065

Hon'ble Judges : Delip Gupta, J;P. Venkata Subba Rao, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The issue involved in all the five appeals is whether fatty acids, wax and gum arising in the course of manufacture of refined vegetable oil are to be treated as "waste" for the purpose of exemption Notification dated 18.05.1995 and would be exempted from duty under this Notification. They are, therefore, being decided by this common order.

2. The period involved in these Excise Appeals is as follows:-

Appeal No.

Period

E/21589/2014

September, 2006 to December, 2006

E/31049/2016

May, 2013 to April, 2014

E/30983/2017

May, 2014 to September, 2014

E/31118/2017

January, 2015 to December, 2015

E/31119/2017

October 2010 to December 2015

3. The issue involved was referred to a Larger Bench of the Tribunal in Excise Appeal No. 21589 of 2014 and Excise Appeal No. 31049 of 2016.

4. In Excise Appeal No. 21589 of 2014, the period involved was from September 01, 2006 to December 01, 2006, whereas the period involved in Excise Appeal No. 31049 of 2016 was from May 2013 to April 2014.

5. As the definition of "excisable goods" was amended by insertion of an "Explanation" in section 2(d) of the Excise Act w.e.f. 10.05.2008, the issue in Excise Appeal No. 21589 of 2014 was covered by the unamended section 2(d) of the Excise Act, while that in Excise Appeal No. 31049 of 2016 was covered by the amended provisions of section 2(d) of the Excise Act.

6. Section 2(d) of the Excise Act defines "excisable goods" and, as it stood prior to its amendment on 10.5.2008, is reproduced below:

2(d) "excisable goods" means "goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt.

7. An "Explanation" was inserted to section 2(d) by Finance Act No. 18 of 2008 on 10.05.2008 and the "Explanation" is reproduced below:

"Explanation: For the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable."

8. "Manufacture" is defined in section 2(f) of the Excise Act and is reproduced below:

"2(f) "manufacture" includes any process, -

(1) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the section or Chapter notes of the First Schedule as amounting to manufacture; or

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer."

9. The Larger Bench of the Tribunal noticed that a Larger Bench of the Tribunal had earlier answered a reference in Ricela Health Foods Ltd. v/s C.C.E., Chandigarh, Allahabad, wherein the following two points were examined-

(i) Before examining the admissibility of exemption under the Notification, it should be determined whether the goods namely soap muddy/ third grade oil/ wax are manufactured goods because only then the issue of levy of excise duty will arise; and

(ii) Whether these products are waste products and so will be covered by the exemption Notification.

10. In regard to the first point, the Larger Bench of the Tribunal in Ricela Health observed that the process of manufacturing refined vegetable oil is essentially by removing the unwanted materials that are present in the crude vegetable oil and hence the removal of unwanted materials resulting in products like gums, waxes and fatty acid cannot be called a process of manufacture of these gums, waxes and fatty acid. The process of manufacture is only for refined oil.

11. In regard to the second point, the Larger Bench of the Tribunal in Ricela Health observed that the products gums, waxes and fatty acid, in the alternative, can also be treated as waste products and, therefore, would be covered by the exemption Notification.

12. In regard to the period from September 01, 2006 to December 01, 2006, the larger Bench of the Tribunal in M/s Lohiya Industries found no good reason to take a different view and accordingly, answered the reference in the same terms.

13. In regard to the period from May 2013 to April, 2014, the Larger Bench in Lohiya Industries observed as under:-

19. The benefit of the Notification would be available to the appellant despite the insertion of Explanation to section 2(d) of the Excise Act, because even if a by-product is marketable, so long as it is not manufactured goods in terms of section 2(f) of the Excise Act, it cannot be exigible to excise duty.

14. In the present five appeals, the period involved is both prior to the amendment made in the definition of 'excisable goods' and after the amendment on 10.05.2008. The issue has been answered by the Larger Bench by order dated 31.03.2021.

15. The benefit of the Notification dated 18.5.1995 would, therefore, be available to the Appellant. The impugned orders have denied the benefit of this Notification and have confirmed the demand of duty on clearance of soap muddy/ third grade oil/wax.

16. The impugned orders, therefore, cannot be sustained and are set aside. The five Excise Appeals bearing numbers, 21589 of 2011, 31049 of 2016, 31118 of 2017, 31119 of 2017, 30983 of 2017 are accordingly, allowed.

(Order dictated and pronounced in the open Court)