

A NOTE ON LEGAL JUSTIFICATION FOR ELIGIBILITY OF EXEMPTION TO SLUDGE/GUMS, WAXES, RECOVERED OIL, SOAP STOCKS, FATTY ACIDS ARISING IN THE COURSE OF MANUFACTURE OF REFINED RICE BRAN OIL

1. The Noticee is engaged in the manufacture of Refined Rice Bran Oil, classifiable under Chapter Sub-heading 15159040 of the First Schedule to the Central Excise Tariff Act, 1985, which is liable to *nil* rate of duty. During the course of manufacture of Refined Rice Bran Oil, certain impurities which are present in the crude Rice Bran Oil are removed in the form of Sludge/Gums, Waxes, Recovered Oil, Soap Stocks, Fatty Acids etc. The removal of these impurities is a compulsion upon the Noticee to meet the standards of Refined Rice Bran Oil as laid down in the Food Regulations. Thus, the production of Sludge/Gums, Waxes, Recovered Oil, Soap Stocks, Fatty Acids etc. in the present case is not due to any commercial intention or interest and is inevitable to meet the statutory obligations.
2. The Noticee had been clearing these inevitable residues without payment of excise duty claiming that the same fall within the scope of the term 'waste' as appearing in Exemption Notification No. 89/95-C.E. A copy of the said Notification is annexed herewith and marked as **Annexure 'A'**.
3. The only issue in dispute in this case is as to whether the Sludge/Gums, Waxes, Recovered Oil, Soap Stocks, Fatty Acids etc. arising in the course of manufacture of the main product i.e. Refined Rice Bran Oil, fall within the scope of the term 'waste' as appearing in the exemption

Notification No. 89/95-C.E. The Department's stand is that these do not fall within the scope of the term 'waste' as these have industrial/commercial usage and are saleable, hence, are by-products, not 'waste'.

4. There are two conflicting decisions of the Hon'ble Tribunal on the issue, one by the Division Bench, Bangalore and another by the Division Bench, Delhi. The Bangalore Bench of the Hon'ble Tribunal in the case of **CCE, Hyderabad Vs. Priyanka Refineries Ltd.** reported in 2010 (249) ELT 70 (Trib.), categorically held that 'soap stock' arising in the course of manufacture of Refined Edible Vegetable Oil is eligible for exemption under Notification No. 89/95-C.E. as 'waste', though the Revenue may call it a 'by-product' (Refer **Annexure 'B'**). Later on, the Delhi Bench of the Hon'ble Tribunal in the case of **CCE, Jalandhar v. A.G Flats Limited** reported in 2012(277) ELT 96 (T-Del), took a view that a by-product would be waste only if it has no value or negligible value (Refer **Annexure 'C'**). Civil Appeals against both these decisions were dismissed *in limine* by the Division Benches of the Apex Court *vide* Orders dated 07.01.2010 (Refer **Annexure 'D'**) and dated 02.01.2012 (Refer **Annexure 'E'**), respectively.
5. It is a well-settled law that in case of conflicting judgments of the co-equal benches/co-ordinate benches, the judgment which states the law accurately has to be followed and mere incidence of time whether the judgments of co-equal benches are earlier or later is hardly relevant. In the case of **Indo Swiss Time Limited, Dundahera v. Umrao and**

Ors. reported in AIR 1981 P H 213, the Full Bench of the Hon'ble Punjab & Haryana High Court had observed as under:

“Now the contention that the latest judgment of a co- ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior Court are of co-equal Benches and therefore, of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extant then both of them cannot be binding on the courts below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of coequal Benches of the Superior Court are earlier later is a consideration which appears to me as hardly relevant.”

Later on, the Full Bench of the Hon'ble Allahabad High Court in the case of **Ganga Saran v. Civil Judge, Hapur, Ghaziabad and Ors.** reported in AIR 1991 All 114 agreed with the view taken by the Full Bench of Punjab & Haryana High Court in Indo Swiss Time Limited (supra) that when there is a conflict between two decisions of equal Benches, which cannot be reconciled, the courts must follow the judgment which appears to them to state the law accurately and elaborately.

The above observations were again relied upon recently by the Hon'ble Delhi High Court in the case of **Smt. Gopa Manish Vora Vs. Union of India (UOI) and Anr.** reported in WP(Crl) 2444/2006.

In view of the above settled position of law, the merits of both the judgments of the co-ordinate benches of Hon'ble Tribunal need to be examined before following any of the judgments.

6. In the case of **CCE, Hyderabad Vs. Priyanka Refineries Ltd.** reported in 2010 (249) ELT 70 (Trib.) the Bangalore Bench of the Hon'ble Tribunal categorically held that 'soap stock' arising in the course of manufacture of Refined Edible Vegetable Oil is eligible for exemption under Notification No. 89/95-C.E. as 'waste', though the Revenue may call it a 'by-product'. The Hon'ble Tribunal mainly relied upon the observations of the Apex Court in the case of **Khandelwal Metal & Engineering Works Vs. Union of India** reported in 1985 (20) E.L.T. 222 (S.C.), wherein the Apex Court had observed that, "waste and scrap are the by-products of the manufacturing process".
7. The Statutory Civil Appeal of the Department against the Order of the Bangalore Bench of the Hon'ble Tribunal was dismissed *in limine* by the Hon'ble Supreme Court *vide* Order dated 07.01.2010 (Refer **Annexure 'D'**). Consequently, in many cases the Revenue had dropped the demands, stopped issuing further Show Cause Notices and filed applications for withdrawal of departmental appeals (Refer **Annexure 'F'**), which were allowed by the Delhi bench of the Hon'ble Tribunal (Refer **Annexure 'G'**). This fact was intimated to the Central Board of Excise and Customs by the Chief Commissioner, Lucknow *vide* his letter C.No. V(30) CCO/Lko/Tech/108/2009 dated 25-08-2010 (Refer **Annexure 'H'**) and the Board did not object to these actions (Refer **Annexure 'I'**). This shows that the Department had finally accepted the

verdict of the Bangalore bench of the Hon'ble Tribunal as upheld by the Apex Court.

It is a well-settled law that once the Department has taken a particular stand on an issue, it is debarred from taking a different stand on the same issue in other cases. Para no.14 of the Order passed in the case of **CCE v. Novapan Industries Ltd.**, reported in 2007 (209) ELT 161 (SC), reads as :-

“In view of a catena of decisions of this Court, it is settled law that the department having accepted the principles laid down in the earlier case cannot be permitted to take a contra stand in the subsequent cases [See: Birla Corporation Ltd. v. CCE [2005 (186) E.L.T. 266 (S.C.)], Jayaswals Neco Ltd. v. CCE, Nagpur [2006 (195) E.L.T. 142 (S.C.)] etc.]”

8. However, later on, in the case of **CCE, Jalandhar v. A.G Flats Limited** reported in 2012(277) ELT 96 (T-Del), the Department took a different stand on the same issue before the Delhi bench of the Hon'ble Tribunal, in spite of being legally debarred to do so in view of the settled position of law as laid down by the Apex Court. The Hon'ble Bench went ahead to take a different view on the issue than the one already taken by the coordinate bench against the principle laid down in the case of **State of Bihar v. Kalika Kuer @ Kalika Singh and Ors.**, reported in AIR 2003 SC 2443, wherein the Apex Court had categorically held that the earlier judgment may seem to be not correct yet it will have the binding effect on the later bench of coordinate jurisdiction and in case it is felt that earlier decision is not correct on merits, the bench is bound to refer the matter to a larger Bench to examine the issue.

9. It is pertinent to mention that in arriving at contrary findings on the issue than the one already arrived at by the co-ordinate bench, the Hon'ble Bench not only ignored the above-referred principle laid down by the Apex Court, but had also relied upon invalid references. The Hon'ble Bench has purportedly relied upon "Oxford Advanced Learners Dictionary" & decision of the Larger Bench of the Hon'ble Tribunal in the case of **Markfed Vanaspati & Allied Industries v. CCE** reported in 2000 (116) ELT 204 (Tri-LB). With due respect to the Hon'ble Bench, it is humbly submitted that reference to the Oxford Advanced Learner's Dictionary and **Markfed Vanaspati Case** is totally invalid.

Oxford Advanced Learner's Dictionary has defined the term 'waste' as under:-

'Waste' noun: "materials that are no longer needed and are thrown away"

'Waste' adjective: "no longer needed for a particular process and therefore thrown away"

A copy of the relevant page no. 1737 of the Oxford Advanced Learner's Dictionary, 8th edition is enclosed and marked as **Annexure 'J'**. A perusal of the definition of the term 'waste' as given in Oxford Advanced Learners' Dictionary would reveal that it has nowhere defined the term 'waste' as "a by-product which is of no value or very low value" as referred in the para 6 of the Order passed in the case of A.G. Flats. The words reproduced/referred by the Hon'ble Bench are at much variance than the actual words appearing in the dictionary.

Further, the Hon'ble Bench has missed to properly note the ratio of the Larger Bench decision in the case of **Markfed Vanaspati & Allied Industries v. CCE** reported in 2000 (116) ELT 204 (Tri-LB). It has purportedly relied on a proposition which is not there in the decision. The Hon'ble Bench has, in para no. 6, of its decision, referred to the decision of the Larger Bench in Markfed Vanaspati & Allied Industries (supra) and held as follows :

“after observing that by-product means something of value produced in making the main product or a substance obtained in course of a specific process but not a primary object, has held that the spent earth arising in course of refining of oil, being of no value, is not a new product or a by-product.”

It is submitted that the decision of the Larger Bench of the Hon'ble Tribunal in the Markfed Vanaspati case (supra) actually held that as the spent earth does not emerge from a process of manufacture, and, hence is not dutiable. The decision nowhere holds that spent earth 'being of no value', is not a new product or a by-product. The relevant extract is reproduced hereunder (Refer **Annexure 'K'**) :-

“The argument of the learned SDR that spent earth is a by-product resulting from the manufacture of the edible oils cannot be accepted, in the light of process and source of its emergence, discussed above. Even otherwise, by-product means something of value produced in making main product or a substance obtained in the course of a specific process, but not its primary object. For example, kerosene is by-product of petroleum refining. The spent earth, as observed above, is only the second name of the activated clay and is not a new or by-product emerging from the manufacture of oils, as the activated clay is used only for the purpose of bleaching and decolouring the oil and that process as per the observations of the Apex Court in Union of India v. Delhi Cloth & General Mills (supra) cannot be said to be a manufacturing process.”

Thus, the reliance by the Hon'ble Bench on the Oxford Advanced Learner's Dictionary as well as the decision of Markfed Vanaspati (supra) is erroneous and is unsustainable both in fact as well as in law.

10. With due respect to the aforesaid decision of the Hon'ble Bench, it is humbly submitted that the law laid down by the Delhi Bench of the Hon'ble Tribunal is a bad law. The interpretation of the term 'waste' as the by-products having 'no value' or 'negligible value' which have only to be discarded as held by the Hon'ble CESTAT makes the Notification in question totally redundant. Any 'waste' which has 'no value' or is only to be discarded (not marketed) even though it has some value, would not be liable to excise *per se* and hence, does not require any specific exemption notification. Notification No. 89/95-C.E. exempts from duty those kinds of 'waste, parings and scrap' which are otherwise leviable to duty under the tariff. This is very much apparent from the following words used in the Notification :-

“and falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from the whole of the duty of excise leviable thereon which is specified in the said Schedule:”

Therefore, restricting the scope of the term 'waste' as 'by-products having no value or negligible value which have only to be discarded' is against the letter and spirit of the Notification.

11. Even otherwise, the term 'negligible value' used to qualify any by-product as 'waste' is a very subjective term. What amounts to 'negligible value' in a particular case can never be said with certainty and will totally depend upon the whims and fancies of the person interpreting the same.

Further, it could never be the intention of the Notification in question to exempt 'waste' upto a particular value. This interpretation of the term 'waste' amounts to reading the Notification in question by adding words to it, which is not permitted under the law. Reference is invited to the case of ***CCE Hyderabad Vs. Sunder Steels Ltd., reported in 2005 (120) ECR 154***, wherein, the Hon'ble Supreme Court had held that, exemption notification are not to be interpreted by adding words to that notification.

12. Further, this interpretation is also against the principles of Noscitur a sociis and Ejusdem Generis. The principle "Noscitura sociis" is explained as "The meaning of a doubtful word may be ascertained by reference to the meaning of the word associated with it" in the Wharton's Law Lexicon 15th edition. Similarly, the principle "Ejusdem Generis" is explained 'as of the same class or kind'. Therefore, the meaning of the word "waste" is to be understood in context of the word "paring and scrap". As per Webster's online dictionary "Scrap may refer to anything that is leftover.....Scrap is commonly used to describe recyclable material of monetary value that are separated from trash or salvaged." As per Oxford's Advanced Learners' Dictionary, scrap means "things that are not wanted or cannot be used for their original purpose, but which have some value for the material they are made of." Since the term 'waste' has been used in the Notification along with the terms 'parings and scrap', which are always sold for a value, so going by the principles of Noscitur a sociis and Ejusdem Generis, it cannot be said

that the term 'waste' as used in the Notification refers to something which has no value or negligible value.

13. It is pertinent to mention that the Order passed by the Delhi Bench of the Hon'ble Tribunal is not only based upon invalid premises/references, but also defeats the very purpose and policy behind the Notification, which is not permissible as per the law laid down by the Apex Court. It is a well-settled law that the interpretation of an exemption Notification has to go in consonance with its purpose and policy. The Apex Court in the case of ***Collector of Central Excise Etc. v. The Himalayan Cooperative Milk Products Union Limited etc.*** reported in AIR 2000 SC 3669 has held that:-

“Such Notifications by which exemption or other benefits are provided by the Government in exercise of its statutory power, normally have some purpose and policy decision behind it. Such benefits are meant to be provided to the investors and manufacturers. Therefore, such purpose is not to be defeated nor those who may be entitled for it are to be deprived by interpreting the notification which may give it some meaning other than what is clearly and plainly flowing from it.”

The Delhi Bench of the Hon'ble Tribunal has not considered the purpose and policy behind the Notification. A perusal of the Finance Minister's Budget 1995-96 speech and the relevant file notings of the Department, reveals that the purpose and policy behind the exemption Notification is to free such Units from excise control, if their 'main product' is not liable to duty.

Para 106 of the Finance Minister's Budget 1995-96 speech reads as(Refer **Annexure 'L'**) :-

“There has been a perpetual problem with manufacturers of exempted goods as they may have to pay excise duty on waste

and scrap generated during the process of manufacture. It does not seem very logical to bring these units under the excise control only for the purpose of charging duty on such waste and scrap.....”

Para no. 2 of the relevant file notings of the Department of Revenue-Tax

Research Unit reads as(Refer **Annexure ‘M’**) :-

“The rationale was that as the units are exempted from excise control in relation to the main product made by them, it is not logical to bring them under excise control only for the purpose of charging duty on such waste and scrap.”

Thus, the rationale given behind the Notification in question makes it crystal clear that once the main product of the Unit is exempted from excise, the Unit is to be freed from any kind of excise control, which means that the rationale behind the Notification does not create any distinction between ‘waste’ and ‘by-products’ and does not provide for any exclusion in favour of by-products, once the main product is exempted.

19. Even otherwise, what is termed as ‘by-product’ in the commercial sense is nothing but ‘waste’ in the legal sense. Even the dictionary meanings also support the view that the ‘by-products’ fall within the scope of the term ‘waste’.

The Merriam-Webster Dictionary includes “an unwanted by-product of a manufacturing or chemical process” in the scope of term ‘waste’(Refer **Annexure ‘N’**).

Fairchild Dictionary of Textile also defines ‘waste’ as by-products created in the manufacture of fibers, yarns and fabric(Refer **Annexure ‘O’**).

20. Even the Apex Court's pronouncements have also included 'by-products' in the scope of term "waste".

In the case of **Collector of Central Excise, Patna Vs. Tata Iron & Steel Co. Ltd.** reported in 2004 (165) E.L.T. 386 (S.C.), the Apex Court held zinc dross and flux skimming arising in the process of galvanization of steel sheets as 'waste', in spite of the fact that the same were declared by the respondent/assessee themselves as a 'by-product' in their product manual and were sold as such.

In the case of **Khandelwal Metal & Engineering Works Vs. Union of India** reported in 1985 (20) E.L.T. 222 (S.C.), although the issue involved was as to whether the imported brass scrap would attract additional customs duty under Section 3 of the Indian Customs Tariff Act, the Apex Court had observed:-

"The production of waste and scrap is a necessary incident of the manufacturing process. It may be true to say that no prudent businessman will intentionally manufacture waste and scrap. But, it is equally true to say that waste and scrap are the by-products of the manufacturing process."

21. In view of the fact that the dictionary meanings and judicial pronouncements include 'by-products' in the scope of the term 'waste', irrespective of its value and in view of the fact that differentiating 'by-products' from the term 'waste' as used in the Exemption Notification No. 89/95-C.E. is not in consonance with the purpose and policy behind the Notification, the findings arrived at by the Delhi Bench of the Hon'ble Tribunal are devoid of merits and the decision of the Bangalore Bench of the Hon'ble Tribunal in the case of **CCE, Hyderabad Vs. Priyanka**

Refineries Ltd. reported in 2010 (249) ELT 70 (Trib.) lays down the law on the issue more accurately.

22. In view of the above submissions, Sludge/Gums, Waxes, Recovered Oil, Soap Stocks, Fatty Acids etc. arising in the manufacture of Refined Rice Bran Oil fall within the scope of the term 'waste' as appearing in the Notification No. 89/95-C.E. and are eligible for exemption under the said Notification.