

IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL

Misc. Application No. Withdrawal of Appeal/ /2010

E1M/80.4/10 EX In the

Appeal No. E/113/2009 - EX [DB]

In the matter of

Commissioner, Central Excise Lucknow Appellant

Vs.

M/s J.R. Agro Industries Ltd., 4.4 Km Dewa Road, Barabanki, Respondent

Subject:- Misc. Application for Withdrawal of Appeal

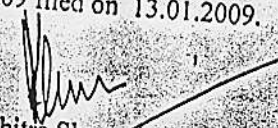
It is most respectfully submitted:-

1. that M/s J.R. Agro Industries Ltd., 4.4 Km Dewa Road, Barabanki, the Respondent, are engaged in manufacture of refined vegetable oil falling under Chapter 15 of Central Excise Tariff Act, 1985.
2. that the Respondent preferred two Appeals before the Commissioner (Appeals), Central Excise, Lucknow against the Order-in-Original No.04-A.D.C.(J.C.)/KO/08 dated 21.01.2008 and Order-in-Original No.49(19/07)Dem/C.Ex./Lko-II/08 dated 23.07.08 passed by the Additional Commissioner, Central Excise, Lucknow and Assistant Commissioner, Central Excise Division-II, Lucknow respectively, confirming the demand of duty on "Fatty Acid" & "Vegetable Oils Residue" (By Product of exempted goods i.e. Refined Oil) and imposing equal penalty under section 11A of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002.
3. that the said Appeals were disposed of by the Commissioner (Appeals), Central Excise, Lucknow vide impugned Order- In-Appeal No. 93-94-CE/08 dated 30.09.2008.
4. that on scrutiny, the Committee comprising of the Commissioner, Central Excise, Lucknow and Commissioner, Central Excise, Kanpur under Section 35B(2) did not find the impugned Order-in-Appeal legal and proper and therefore, an appeal was filed before the Hon'ble Tribunal on 13.01.2009 on the grounds mentioned therein.

5. that accordingly an appeal was filed before Hon'ble CESTAT on 13.01.2009 against Order-in-Appeal No 93-94-CE/LKO/2008 dated 30.09.2008.
6. Hon'ble Chief Commissioner, Central Excise and Service Tax, Lucknow Zone has extensively examined the issues raised in Order-in-Appeal No 93-94-CE/LKO/2008 dated 30.09.2008 and is of the view that the waste/by product etc of Oil Mill & Solvent Extraction Industry or of Rice Milling Industry or of Tanning Industry etc would not be chargeable to duty of excise as per Notification No 89/95-CE dated 18.5.1995.
7. Hon'ble Chief Commissioner also found impugned Order-in -Appeal No 93-94-CE/LKO/2008 dated 30.09.2008 passed by the then Commissioner (Appeals) legal and proper.
8. On similar issue, Final Order Nos 734-736/2009 dated 13.5.09 certified on 18.7.2009 in Appeal Nos E/294,374 &385/2008 had been passed by Hon'ble CESTAT. SZB, Bangalore in case of CCE Hyderabad vs M/s Priyanka Refineries Ltd wherein Revenue appeal was rejected.
9. The Commissioner of Customs & Central Excise, Hyderabad had not accepted the above mentioned Final Order No 734-736/2009 dated 13.5.09 passed by Hon'ble CESTAT, SZB, Bangalore and a proposal was sent to Board for filing of Special Leave Petition before Hon'ble Supreme Court. Hon'ble Supreme Court of India vide Civil Appeal No 218-220 of-2010 dismissed the case.
10. that in view of the facts stated above this application is being filed for withdrawal of Revenue Appeal No E/113/2009, filed on 13.01.2009.

PRAYER

It is therefore, most respectfully prayed that Hon'ble Tribunal may please be kind enough to withdraw the Revenue Appeal No E/112/2009 filed on 13.01.2009.

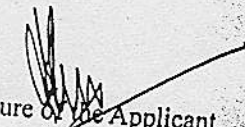

(Suchitra Sharma)
COMMISSIONER
CENTRAL EXCISE AND SERVICE TAX
LUCKNOW

VERIFICATION

I, Suchitra Sharma, Commissioner, Central Excise and Service Tax, Lucknow the applicant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the 1st day of Oct, 2010

Place : Lucknow
Date : 01-10-2010


Signature of the Applicant