

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Excise Miscellaneous Application No.60310 of 2020**  
**In**  
**Excise Appeal No.55515 Of 2013**

**With**

**Excise Appeal No. 55515 Of 2013**

[Arising out of OIA No.542-544/CE/Appeal/CHD-II/2012 dated 01.11.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

**M/s Kissan Fats Limited**

Vill- Ghubaya, Tehsil-Jalalabad,  
Ferozepur, Punjab-152024

**: Appellant (s)**

Vs

**The Commissioner of Central Excise,**  
**Chandigarh-II**

Plot No. 19, Central Revenue Building,  
Sector-17C, Chandigarh-160017

**: Respondent (s)**

**With**

**2.Excise Appeal No.55542 of 2013 [M/s BCL Industries and Infrastructure Limited]**

[Arising out of OIA No.542-544/CE/Appeal/CHD-II/2012 dated 01.11.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

**3.Excise Appeal No. 55543 of 2013 [M/s BCL Industries and Infrastructure Limited]**

[Arising out of OIA No.542-544/CE/Appeal/CHD-II/2012 dated 01.11.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

**4.Excise Appeal No.53401 of 2014 [Kissan Fats Limited]**

[Arising out of OIA No.JAL-EXCUS-000-APP-327-13-14 dated 13.03.2014 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

**5.Excise Appeal No.53410 of 2014 [Kissan Fats Limited]**

[Arising out of OIA No.JAL-EXCUS-000-APP-323-13-14 dated 13.03.2014 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

**6.Excise Appeal No. 61359 of 2018[M/s BCL Industries and Infrastructure Limited]**

[Arising out of OIA No.LUD-EXCUS-001-APP-1405-1407-18 dated 16.07.2018 passed by the Commissioner (Appeals), Goods & Service Tax, Ludhiana]

**7.Excise Appeal No. 61462 of 2018 [M/s BCL Industries and Infrastructure Limited]**

[Arising out of OIA No.LUD-EXCUS-001-APP-956-957-18 dated 18.04.2018 passed by the Commissioner (Appeals), Goods & Service Tax, Ludhiana]

**8.Excise Appeal No.60671 of 2019 [M/s BCL Industries and Infrastructure Limited]**

[Arising out of OIA No.LUD-EXCUS-001-APP-2346-19 dated 30.04.2019 passed by the Commissioner (Appeals), Goods & Service Tax, Ludhiana]

**9.Excise Appeal No. 58648 of 2013 [M/s BCL Industries and Infrastructure Limited]**

[Arising out of OIA No.164-167/CE/APPL./CHD-II/2013 dated 25.04.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

**10.Excise Appeal No. 58649 of 2013 [M/s BCL Industries and Infrastructure Limited]**

[Arising out of OIA No.164-167/CE/APPL./CHD-II/2013 dated 25.04.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

**11.Excise Appeal No. 58650 of 2013 [M/s Kissan Fats Limited]**

[Arising out of OIA No.164-167/CE/APPL./CHD-II/2013 dated 25.04.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

**12.Excise Appeal No. 58651 of 2013 [M/s Kissan Fats Limited]**

[Arising out of OIA No.164-167/CE/APPL./CHD-II/2013 dated 25.04.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

**13.Excise Appeal No.60722 of 2013 [M/s BCL Industries and Infrastructure Limited]**

[Arising out of OIA No.JAL-EXCUS-000-APP-195-13-14 dated 18.11.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

**14.Excise Appeal No.59159 of 2013 [M/s Sangrur Agro Limited]**

[Arising out of OIA No.187/CE/APPEAL/CHD-II/2013 dated 07.05.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

APPEARANCE:

Shri G.S. Sandhe and Shri Sudeep Singh Bhangoo, Advocates  
for the Appellants

Shri Aneesh Dewan and Shri ShivamSyal, Authorised Representatives  
for the Respondents

**CORAM:**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER Nos.60383-60396/2023**

Date of Hearing:05.09.2023

Date of Decision:14.09.2023

**Per: P. ANJANI KUMAR**

The appellants, M/s BCL Industries and Infrastructure Limited; M/s Kissan Fats Limited and M/s Sangrur Agro Limited, have filed these appeals. The issue being common to all the appeals, they are being taken up together for decision. The appellants are manufacturers of vegetable oils and have availed benefit of Notification No.89/95-CE dated 18.09.1995 on the fatty acids, acid oils, gum and sludge, waxes and spent earth etc., arising during the manufacture of vegetable oils. The Department contended that the items manufactured do not qualify to be waste in terms of the said notification. In respect of Appeal Nos.E/61359/2018, E/61462/2018 and E/60671/2019, the availment of Notification No.10/1996 by the appellants has been disputed by the Department. Show-cause notices were issued for recovery of duty and penalty and were confirmed by the Original/ Appellate Authorities as mentioned above.

The details of the appeals are as follows:

| <b>Sl. No.</b> | <b>Appeal No.</b>               | <b>Name of the Party</b>                        | <b>Impugned order</b>                                                                                                                      |
|----------------|---------------------------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| 1.             | Excise Appeal No. 55515 Of 2013 | M/s Kissan Fats Limited                         | [Arising out of OIA No.542-544/CE/Appeal/CHD-II/2012 dated 01.11.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II] |
| 2.             | Excise Appeal No. 55542 of      | [M/s BCL Industries and Infrastructure Limited] | [Arising out of OIA No.542-544/CE/Appeal/CHD-II/2012 dated 01.11.2012 passed by the Commissioner                                           |

|    |                                 |                                                 |                                                                                                                                             |
|----|---------------------------------|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
|    | 2013                            |                                                 | (Appeals), Central Excise, Chandigarh-II]                                                                                                   |
| 3. | Excise Appeal No. 55543 of 2013 | [M/s BCL Industries and Infrastructure Limited] | [Arising out of OIA No.542-544/CE/Appeal/CHD-II/2012 dated 01.11.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]  |
| 4. | Excise Appeal No.53401 of 2014  | Kissan Fats Limited                             | [Arising out of OIA No.JAL-EXCUS-000-APP-327-13-14 dated 13.03.2014 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]    |
| 5. | Excise Appeal No.53410 of 2014  | Kissan Fats Limited                             | [Arising out of OIA No.JAL-EXCUS-000-APP-323-13-14 dated 13.03.2014 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]    |
| 6. | Excise Appeal No. 61359 of 2018 | [M/s BCL Industries and Infrastructure Limited] | [Arising out of OIA No.LUD-EXCUS-001-APP-1405-1407-18 dated 16.07.2018 passed by the Commissioner (Appeals), Goods & Service Tax, Ludhiana] |
| 7. | Excise Appeal No. 61462 of 2018 | [M/s BCL Industries and Infrastructure Limited] | [Arising out of OIA No.LUD-EXCUS-001-APP-956-957-18 dated 18.04.2018 passed by the Commissioner (Appeals), Goods & Service Tax, Ludhiana]   |
| 8. | Excise Appeal No.60671 of 2019  | [M/s BCL Industries and Infrastructure Limited] | [Arising out of OIA No.LUD-EXCUS-001-APP-2346-19 dated 30.04.2019 passed by the Commissioner (Appeals), Goods & Service Tax, Ludhiana]      |

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|-----|------------------------------------------|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 9.  | Excise<br>Appeal No.<br>58648 of<br>2013 | [M/s BCL<br>Industries and<br>Infrastructure<br>Limited] | [Arising out of OIA No.164-<br>167/CE/APPL./CHD-II/2013 dated<br>25.04.2013 passed by the Commissioner<br>(Appeals), Central Excise, Chandigarh-II] |
| 10. | Excise<br>Appeal No.<br>58649 of<br>2013 | [M/s BCL<br>Industries and<br>Infrastructure<br>Limited] | [Arising out of OIA No.164-<br>167/CE/APPL./CHD-II/2013 dated<br>25.04.2013 passed by the Commissioner<br>(Appeals), Central Excise, Chandigarh-II] |
| 11. | Excise<br>Appeal No.<br>58650 of<br>2013 | [M/s Kissan Fats<br>Limited]                             | [Arising out of OIA No.164-<br>167/CE/APPL./CHD-II/2013 dated<br>25.04.2013 passed by the Commissioner<br>(Appeals), Central Excise, Chandigarh-II] |
| 12. | Excise<br>Appeal No.<br>58651 of<br>2013 | [M/s Kissan Fats<br>Limited]                             | [Arising out of OIA No.164-<br>167/CE/APPL./CHD-II/2013 dated<br>25.04.2013 passed by the Commissioner<br>(Appeals), Central Excise, Chandigarh-II] |
| 13. | Excise<br>Appeal<br>No.60722 of<br>2013  | [M/s BCL<br>Industries and<br>Infrastructure<br>Limited] | [Arising out of OIA No.JAL-EXCUS-000-<br>APP-195-13-14 dated 18.11.2013 passed<br>by the Commissioner (Appeals), Central<br>Excise, Chandigarh-II]  |
| 14. | Excise<br>Appeal<br>No.59159 of<br>2013  | [M/s Sangrur<br>Agro Limited]                            | [Arising out of OIA<br>No.187/CE/APPEAL/CHD-II/2013 dated<br>07.05.2013 passed by the Commissioner<br>(Appeals), Central Excise, Chandigarh-II]     |

2. Shri G.S. Sandhe appearing on behalf of M/s BCL Industries and Infrastructure Limited; M/s Kissan Fats Limited, Shri Sudeep Singh Bhangoo appearing on behalf of M/s Sangrur Agro Limited, submit

that the issue is no longer *res integra*. Shri G.S. Sandhe, learned Counsel submits that:

(i) Tribunal in the case of Priyanka Refineries Ltd. 2010 (249) ELT 70 (Tri. Bangalore) held that soap stocks arising during the manufacture of refining of oil is eligible for exemption under Notification No.89/95; on an appeal filed by the Department, Hon'ble Apex Court dismissed the Department's appeal 2011 (274) ELT A16 (SC).

(ii) CESTAT, New Delhi in the case of M/s A.G. Fats, vide Final Order No.648-661/2011 dated 25.07.2011- 2012 (277) ELT 96 (Tri. Delhi) held that exemption under Notification No.89/95 is not admissible; the appeals filed by the parties were rejected by the Hon'ble Supreme Court in the case of A.P. Solvex Limited- 2014 (300) ELT A74 (SC).

(iii) Tribunal, in the case of Maheswari Solvent Extraction Limited- 2014 (299) ELT 116 (Tri. Mum) after considering the above two cases, held that the said by-products are eligible for exemption under the Notification No.89/95.

(iv) In view of the conflicting decisions of the Tribunal benches, Larger Bench was constituted in the case of Ricela Health Foods Limited- 2018 (361) ELT 1049 (Tri. LB) held that the fatty acids, waxes and gum arising during the refining of crude vegetable oils are eligible for the benefit of the notification. The decision was upheld by the Hon'ble Supreme Court in the case of Marico Limited and Others- 2022 (382) ELT436 (SC). Thus, the issue stands settled finally in favour of the appellants.

3. Shri G.S. Sandhe, learned Counsel, further submits that a plain reading of Notification No.89/95 will reveal that three conditions namely (i) the goods should be "Waste, Paring and Scrap" (ii) the goods should arise in the course of manufacture of "Exempted Goods" and (iii) the exemption is not available to the unit which manufactures excisable goods other than "Exempted Goods". He submits that in respect of Appeal Nos. E/61359/2018, E/61462/2018 and E/60671/2019, the lower authorities, though, followed the decision in the case of Ricela Health Foods Ltd. (supra) wrongly denied the exemption, under Notification No.10/96-CE dated 23.07.1996, on the plastic/ tin containers manufactured and captively used. He further submits that Commissioner (Appeals) vide OIA No.164-167 dated 25.04.2013, however, held that the exemption is available. In the case of the appellants themselves, this Bench vide Final Order No.61227/2019 dated 17.12.2019 held that exemption under Notification No.10/96-CE dated 23.07.1996 is available to the appellants.

4. Shri Sudeep Singh Bhangoo, learned Counsel appearing for M/s Sangrur Agro Limited relies on the decision of the Larger Bench in the case of M/s Ricela Health Foods (supra) and this Tribunal's Final Order No.60100-60102/2018 dated 19.02.2018.

5. Shri Aneesh Dewan, assisted by Shri Shivam Syal, Authorized Representatives, appearing on behalf of the Department submits that

though the case has been decided in favour of the Department in the case of M/s A.G. Fats (supra) and upheld by the Hon'ble Supreme Court in the case of M/s A.P. Solvex (supra). Larger Bench in the case of M/s Ricela Health Foods (supra) though referred to M/s A.P. Solvex did not give any finding with regards to the binding effect of the Hon'ble Apex Court's judgment in the case of Marico Limited (supra) wherein M/s A.G. Fats was discussed.

6. Heard both sides and perused the records of the case. We find that the issues raised in the impugned orders are no longer *res integra* after the decision of the Larger Bench in the case of M/s Ricela Health Foods Ltd. (supra). We find that the Larger Bench has observed as follows:

**9.** We have heard both the sides and perused the appeal record to examine the reference made by the Division Bench. Since the appellants submitted on the excisability itself the first point for decision is the excisability of the products, in question. The appellants strongly contended that even before examining the admissibility of exemption under Notification No. 89/95-C.E. the point to be decided is the excisability of the product, in question. It is the case of the appellant that if it can be established that these goods are not manufactured goods then the question of levy itself will not arise. It is contended that the product, in question, are unwanted/inevitable waste. The value realized by the appellants on such unintended waste by sale, itself is not a criteria to decide the excisability. The Hon'ble Supreme Court in *CCE v. Indian Aluminium Company - 2006 (203) E.L.T. 3* (S.C.) held zinc dross and flux skimming are not exigible to central excise duty. Relying on the earlier decisions in *Union of India v. Indian Aluminium Company Ltd. - 1995 (77) E.L.T. 268* (S.C.) and *CCE, Patna v. Tata Iron & Steel Company Ltd. - 2004 (165) E.L.T. 386* (S.C.), the Apex Court held that the dross and skimming arising during the

course of manufacture of metal cannot be subjected to excise levy only because it may have some saleable value, observing that the term "manufacture implies a change; every change, however, is not a manufacture". Every change of an article may be the result of treatment, labour and manipulation. The manufacture would imply something more. There must be a transformation; a new and different article must emerge having a descriptive name, character or use (*Delhi Cloth and General Mills Company Ltd.* - AIR 1963 SC 791 = [1977 \(1\) E.L.T. \(J199\)](#) (S.C.). The Apex Court categorically held that dross do not answers the description of "waste and scrap".

**10.** In view of the ratio adopted by the Apex Court while arriving at the above decisions, the point for consideration in the present dispute is the gums, waxes and fatty acid that emerge as a by-product can be considered as a product arising out of a manufacturing process. The appellants are engaged in converting crude rice bran oil into refined rice bran oil. In effect the processes undertaken by them are towards this intended final product. For producing refined rice bran oil, the gums and waxes available in the crude rice bran oil are to be removed by de-guming and de-waxing. Thereafter by a process of de-acidification/deodorization, by distillation the refined oil is obtained. In this final process fatty acid distillate (fatty acid with odour) is obtained as a waste. As can be seen the gums, waxes and fatty acid distillate are emerging due to removal/refining process of crude rice bran oil. As already noted the process is to obtain refined rice bran oil by removing these unwanted products along with spent earth, which when present makes the oil as crude refined oil.

**11.** The thrust of the arguments by the Revenue is that when a product is capable of being sold for a significant consideration the same cannot be considered as waste. We are unable to accept such summary presumption. Admittedly, in chemical and metallurgical industry when the raw materials are processed with an intended purpose of manufacturing certain final products by a chemical reaction, refining, melting etc. multiple products will result. These products either emerged in the final stage or any of the intermediating stages also. The point for consideration is whether these are to be considered as manufactured goods for excise levy based on the statutory definition for

manufacture or should be considered as manufactured goods based on the likely value they may command while selling. We are clear that the value that a product may or may not fetch cannot be a determinative factor to decide whether the same is a manufactured final product/by-product or a waste/refuse arising during the course of manufacture of final products. This much is clear from the ratio of the Apex Court decision in *Indian Aluminium Co. (supra)*. While no general guidelines can be laid down to decide when a product will be treated as a waste or a by-product, in the present set of facts the products under consideration are clearly not in the nature of by-products emerging during the course of manufacture. The process of manufacturing refined vegetable oil is essentially by removing the unwanted materials that were present in the crude vegetable oil so that a refined vegetable oil can be obtained. In this process of refining, the unwanted materials are removed. Hence, we are of the considered view that the removal of unwanted materials resulting in products like gums, waxes and fatty acid with odour cannot be called as a process of manufacture of these gums, waxes and fatty acid with odour. The process of manufacture is for refined rice bran oil. As such, we note that these incidental products are nothing but waste arising during course of refining of rice bran oil and applying the ratio of Apex Court, as discussed above, these cannot be considered as manufactured excisable goods. Noting that the reference is to decide whether these are to be treated as waste for the purpose of exemption Notification No. 89/95-C.E. we note though the excisability of the product itself is seriously in dispute as per the opinion expressed by us, as above, these cannot be considered as anything other than waste and as such will be covered by the exemption Notification No. 89/95-C.E. This has been pleaded as an alternate argument by the appellant/assessee also.

8. As submitted by both sides, the above decision of Larger Bench was affirmed by the Hon'ble Supreme Court in the case of M/s Marico Limited (supra). Coming to the Department's contention that the decision in the case of A.G. Fats (supra), which was affirmed by Hon'ble Supreme Court, was not discussed by the Larger Bench will

not be of any avail as the decision in the case of M/s Marico Limited (supra) is the latest one and requires to be followed, therefore, by following the principles of judicial discipline, we are of the considered opinion that waste, gums, fatty acids etc. arising during the course of manufacture of vegetable oils are eligible for the exemption Notification No.89/95.

9. Coming to the issue of applicability of the Notification No.10/96 dated 23.07.1996 to the plastic/ tin containers manufactured by the appellants, we find that this Bench vide Final Order No.61227/2019 held that the said plastic/ tin containers are eligible for exemption. We also find that the Commissioner (Appeals) vide OIA No.164-167 dated 25.04.2013 has held similarly. These orders have attained finality. Therefore, we have no hesitation, whatsoever, that plastic/ tin containers manufactured and used for packing of the final products i.e. vegetable oils are eligible for exemption Notification No.10/96 dated 23.07.1996.

10. In view of the above, all the appeals are allowed and miscellaneous application is also disposed of.

*(Pronounced on 14/09/2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)