CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 25387 of 2013

[Arising out of Order-in-Original No. 22/2012 dated 02.11.2012 passed by the Commissioner of Central Excise & ST, Mangalore]

Ruchi Soya Industries Ltd ......**Appellant**
Factory No. 2 P, 3 P & 4 P,
Baikampady Industrial Area,
Mangalore, Karnataka

VERSUS

Commissioner of CE & ST, Mangalore ......**Respondent**
7th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore, Karnataka 575003

<u>APPEARANCE:</u>

Present for the Appellant: Sh. Rajesh Rawal, Advocate

Present for the Respondent: Sh. H. Jayathirtha, Authorized Representative

<u>CORAM:</u>
HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mr. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 21234/2023

DATE OF HEARING: 22.08.2023
DATE OF DECISION: 09.11.2023

PER D. M. MISRA

This appeal is filed against Order-in-Original No. 22/2012 dated 02.11.2012 passed by the Commissioner of Central Excise & ST, Mangalore.

2. Briefly stated facts of the case are that the appellant is manufacturer of Edible Refined Oils falling under Chapter 15 and Fatty Acids under Chapter Heading 3823 of the Central Excise Tariff Act, 1985. Alleging that they were clearing RBD Palm Stearin at 'Nil' rate of duty by wrongly claiming exemption under Notification No. 3/2006-CE dt. 01.03.2006 as amended, investigation was initiated against the appellant and on completion of the same, show cause notice was issued to the appellant on 26.03.2012 for proposing classification of "RBD Palm Stearin" under sub-heading 38231112 of the Central Excise Tariff Act, 1985; recovery of duty of Rs. 16,02,10,687/- for the period from 14.07.2009 to 31.08.2011 with interest and proposal for penalty. On adjudication, the classification was confirmed under the proposed Chapter Heading 38231112 of CETA, 1985 and duty of Rs. 8,06,44,997/- was confirmed with equal amount of interest and penalty.

3. The present appeal is filed, being aggrieved by the Order of the ld. Commissioner, on various grounds, under section 35B of the CEA, 1944.

4. During the pendency of this Appeal, it is brought on record that, Standard Chartered Bank filed a petition under Section 7 of Insolvency and Bankruptcy Code, 2016 (in short, "IBC, 2016") as the Financial Creditor for initiation of Corporate Insolvency Resolution Process (in short, "CIRP") against the

appellant as Corporate Debtor and necessary Orders were passed by the Hon'ble National Company Law Tribunal (in short, "NCLT"), Hyderabad on 08^{th} December 2017 & 15^{th} December 2017. Later the NCLT approved the Resolution Plan under Section 31(1) of the IBC, 2016 and passed the Order dated 24.07.2019.

5. Consequent to the approval of Resolution Plan vide order dated 24.07.2019 and subsequent order dated 04.09.2019, the appellant have filed a miscellaneous application before this Tribunal on 13.08.2021. In the miscellaneous application, the appellant narrated the facts of the proceedings before the Hon'ble NCLT and enclosed orders passed from time to time. Further, referring to the judgment in the case of *Ghansyam Mishra Vs. Edelweiss Reconstruction Company Ltd. - 2021 SCC Online SC 313* and other judgments mentioned in para 14 of the miscellaneous application that the demands for the period from July, 2007 to August, 2011 in relation to the appellant became infructuous, hence stands abated and any/all liability, if any, of any nature whatsoever, stands extinguished and prayed accordingly in the said application.

6. The ld. Advocate for the appellant during the course of hearing, reiterated the submissions advanced in the miscellaneous application and drew our attention to the orders of Hon'ble NCLT dated 24.07.2019 and 04.09.2019. He has submitted that in view of the judgment of Hon'ble Supreme Court in *Ghansyam Mishra's*

case, which has been followed in the appellant's own case by the Hon'ble Gujarat High Court and observed that in such circumstances, the appeal abates, therefore, the present appeal also abates.

7. Per contra, the ld. A.R. for the Revenue submits that once the Resolution Plan is approved by the Hon'ble NCLT, the appeals stand abated as per Rule 22 of CESTAT (Procedure) Rules, 1982 and the Tribunal becomes *functus officio*. In support, he has relied on the following case-laws:-

1) *M/s MC Nally Sayaji Engineering Limited vs. CCGST, Bolpur – 2023 (4) TMI 1076 – CESTAT KOLKATA*
2) *CCE & ST, Surat-II vs. Arcelormittal Nippon Steel India Ltd – 2023 (2) TMI 231 – CESTAT AHMEDABAD*
3) *M/s Jet Airways India Ltd vs. CST, Mumbai-V – 2023 (5) TMI 767 – CESTAT MUMBAI*
4) *M/s Bhushan Power & Steel Ltd vs. CCE, Kolkata-IV – 2023 (5) TMI 184 – CESTAT KOLKATA*
5) *M/s Alok Industries Ltd vs. CCE, Belapur & Mumbai – 2022 (10) TMI 801 – CESTAT MUMBAI*
6) *M/s Murli Industries Ltd vs. CCE, Nagpur – 2022 (11) TMI 289 – CESTAT MUMBAI*

8. Heard both sides and perused the records.

9. The issue involved in present appeal is: whether the appellant are entitled to continue with the Appeal and claim relief after Order of NCLT approving the resolution plan has been passed.

10. Undisputedly, during the pendency of the appeal, necessary orders have been passed 8th December, 2017 by the Hon'ble NCLT approving the Resolution Plan under Section 31(1) of the IBC, 2016.

11. The relevant provision under the CESTAT (Procedure) Rules, 1982 prescribed at Rule 22 reads as under:

> ***"RULE 22. Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application. —***
> *Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be : Provided that every such application shall be made within a period of sixty days of the occurrence of the event : Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit."*

12. The Mumbai bench of this Tribunal in the case of *M/s Alok Industries Ltd's case* (supra) analysed in detail Rule 22 of CESTAT (Procedure) Rules, 1982 and the case laws on the issue including those cited by the Ld. Advocate for the appellant observed that aforesaid Rule 22 should be applicable the moment the successor interest with sufficient rights is appointed by NCLT to make an application for continuation of the proceeding. It is observed as:

*"**4.4** ----------------*
Learned advocate has labored to explain why this rule should not be made applicable in his case. However, in view of the fact as stated in the para 4.2 and 4.3 above we are of the view that moment the successor interest with sufficient rights to be represented is appointed by the NCLT this rule will become applicable and it is for the successor interest to make an application for continuance of the proceedings. In the present case no such application has been filed by the successor interest for the continuance of the proceedings and hence the appeal stands abated by the operation of this rule.

4.5 ....

***4.6** There is no dispute to the binding nature of the resolution plan as approved by the NCLT. It has been settled by the Hon'ble Apex Court in the cases referred to by the learned counsel for the applicant.*

***4.7** -----------------*

***4.8** However, from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become functus officio in the matters relating to this appeal. Further it is also settled that the impugned orders in the appeals have got merged in the order of the NCLT approving the Resolution Plan. The decision of the Hon'ble Bombay High Court referred to by the learned Authorized representative clearly lays down the test as in which condition the said doctrine shall apply in following manner.*

***4.9** We are satisfied that the test laid down by the Hon'ble High Court is applicable in the present case for us to hold so. It is quite interesting to note that applicant to the extent of demand made finds the order of NCLT binding and wants pronouncement in respect of the refund by this tribunal. Can we sit in judgement over the order of NCLT approving the resolution plan? Further issue of refund is any case not the issue raised in appeal it is for the applicant to approach the relevant authorities in the matter.*

***5.1** The appeals filed abate as per the Rule 22 of the CESTAT Procedure Rules, 1982, with effect from the date of the approval of the resolution plan by the NCLT.*

> ***5.2*** *Since the appeals have abated the miscellaneous application filed by the applicant/appellant does not survive."*

13. Similar view has been expressed by other Benches of this Tribunal in the cases cited by the ld. A.R. for the Revenue i.e.*(i) M/s MC Nally Sayaji Engineering Limited vs. CCGST, Bolpur – 2023 (4) TMI 1076 – CESTAT KOLKATA; (ii) CCE & ST, Surat-II vs. Arcelormittal Nippon Steel India Ltd – 2023 (2) TMI 231 – CESTAT AHMEDABAD; (iii) M/s Jet Airways India Ltd vs. CST, Mumbai-V – 2023 (5) TMI 767 – CESTAT MUMBAI; (iv)M/s Bhushan Power & Steel Ltd vs. CCE, Kolkata-IV – 2023 (5) TMI 184 – CESTAT KOLKATA; (v)M/s Murli Industries Ltd vs. CCE, Nagpur – 2022 (11) TMI 289 – CESTAT MUMBAI.*

14. In the appellant's own case, the Hon'ble Gujarat High Court in R/Tax Appeal No. 32 of 2019 taking note of the judgments on the subject including that of Hon'ble Supreme Court in *Ghansyam Mishra*'s case held that in such circumstances, the appeal abates.

15. Needless to mention, as observed by the Hon'ble Supreme Court and High Courts in a catena of cases that the Tribunal is a creature of the statute; it cannot travel beyond the express powers vested under the Statute or Rules framed under the statute while deciding a statutory Appeal filed before it against the Orders of the prescribed statutory authorities mentioned under the statute. The corollary, any order passed by the Tribunal

beyond the vested powers under the statute would be *non est* in law.

16. In the circumstances, we are in complete agreement with the view consistently expressed by this Tribunal in a series of cases referred as above that the appeal abates once the IRP is appointed and/or Resolution plan approved. Consequently, the appeal abates as per Rule 22 of CESTAT (Procedure) Rules, 1982 and this is the relief/Order could be passed as prescribed under the said Rule.

(Order pronounced in the court on 09/11/2023)

(D. M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

RA_Saifi