

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

CEA No.6 OF 2024

BETWEEN

M/S PATANJALI FOODS LIMITED
(FORMERLY KNOWN AS
M/S RUCHI SOYA INDUSTRIES LTD)
HAVING ITS REGISTERED OFFICE AT
RUCHI HOUSE SURVEY NO.169,
ROYAL PALMS, AAREY COLONY
GOREGAON (EAST) MUMBAI-400065
REPRESENTED BY ITS AUTHORISED SIGNATORY
SHRI T GAJENDRA
DEPUTY MANAGER - LEGAL

...APPELLANT

(BY SRI RAJESH RAWAL, ADVCOATE FOR
SRI CHANDRASHEKAR REDDY K P, ,ADVOCATE)

AND

COMMISSIONER OF CENTRAL EXCISE AND
SERVICE TAX
7TH FLOOR, TRADE CENTRE,
BUNTS HOSTEL ROAD
MANGALORE-575003

...RESPONDENT

(BY SRI JEEVAN J NEERALGI, ADVOCATE)

THIS CEA / CENTRAL EXCISE APPEAL IS FILED UNDER SECTION
35G OF THE CENTRAL EXCISE ACT 1944, PRAYING TO

ADMIT AND ALLOW THE PRESENT APPEAL, FRAME AND CONSIDER THE SUBSTANTIAL QUESTIONS OF LAW AS SET OUT IN THE PRESENT APPEAL OR ANY OTHER SUBSTANTIAL QUESTIONS OF LAW THAT ARISES FOR CONSIDERATION OF THIS HONBLE COURT, SET ASIDE FINAL ORDER NO. 21234/2023 DATED 09.11.2023(ANNEXURE-A) PASSED BY THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, BANGALORE AND IT MAY KINDLY BE HELD THAT THE PROCEEDINGS IN RELATION TO IMPUGNED DEMANDS HAVE BECOME INFRACTUOUS AND CONSEQUENTLY STANDS ABATED AND ACCORDINGLY, ANY AND ALL LIABILITY, IF ANY, OF ANY NATURE WHATSOEVER OF THE APPELLANT STANDS EXTINGUISHED PERMANENTLY AND THE INSTANT APPEAL MAY KINDLY BE ALLOWED ACCORDINGLY AND ETC.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 23.09.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, **POONACHA J**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S.G.PANDIT
and
HON'BLE MR JUSTICE C.M. POONACHA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE C.M. POONACHA)

The present appeal is filed by the assessee under Section 35G of the Central Excise Act, 1944¹ challenging the Final Order No.21234/2023 dated 9.11.2003 passed in Excise Appeal No.25387/2013 by the Customs, Excise and Service Tax Appellate Tribunal, Bangalore².

¹ Hereinafter referred to as 'Act of 1944'

² Hereinafter referred to as 'CESTAT'

2. The facts in brief leading to the present appeal are that the assessee (originally known as Ruchi Soya Industries Limited) is engaged in the manufacture of Edible Refined Oils and having its factory at Baikampady Industrial Area, Mangaluru. Consequent to the show cause notice dated 26.3.2012 issued by the respondent, Order-in-Original was passed on 2.11.2012 and issued on 8.11.2012, wherein the Commissioner of Central Excise and Sale Tax, Mangaluru³, ordered, *inter alia*, that an amount of ₹8,06,44,997/- being the Central Excise Duty on "RBD Palm Stearin" manufactured and removed, during the period 14.7.2009 to 26.8.2011 was confirmed. An amount of ₹2,97,29,891/- paid by the assessee was appropriated against the said demand and the remaining duty of ₹5,09,15,106/- was demanded. The assessee preferred an appeal in Excise Appeal No.25387/2013 challenging the demand of ₹5,09,15,106/- passed vide the said order in original before the CESTAT.

³ Hereinafter referred to as 'Commissioner'

3. During the pendency of the appeal, an order dated 8.12.2017/15.12.2017 under Section 7 of the Insolvency and Bankruptcy Code, 2016⁴ was passed by the National Company Law Tribunal, Mumbai Bench⁵ in CP No.1371-1372/I&BP/NCLT/MAH/2017, whereunder the NCLT ordered commencement of Corporate Insolvency Resolution Process⁶ against Ruchi Soya Industries Ltd.,⁷ and an Interim Resolution Professional⁸ was appointed to carry out the functions as per the IBC. Pursuant to the said order dated 8.12.2017, a public announcement was issued on 21.12.2017. Thereafter, the NCLT, vide order 24.7.2019 passed in MA No.1721/2019 and other connected matters, accepted the modified resolution plan and approved the same, consequent to which change in control of the assessee has taken place and the name of Ruchi Soya was changed to Patanjali Foods Limited⁹ as is forthcoming from the

⁴ Hereinafter referred to as 'IBC'

⁵ Hereinafter referred to as 'NCLT'

⁶ Hereinafter referred to as 'CIRP'

⁷ Hereinafter referred to as 'Ruchi Soya'

⁸ Hereinafter referred to as 'IRP'

⁹ Hereinafter referred to as 'Patanjali'

Certificate dated 24.6.2022 issued by the office of the Registrar of Companies, Mumbai.

4. The assessee namely, Patanjali filed Miscellaneous Applications before the CESTAT placing on record the subsequent events of the CIRP of Ruchi Soya. It was further contended vide the said Miscellaneous Applications, *inter alia*, that the demand for the period July 2007 to August 2011 in relation to the assessee has stood extinguished since no claim was filed by the revenue before the IRP. The said application was opposed by the revenue before the CESTAT contending that consequent to the approval of the resolution plan by the NCLT, the appeal filed by the assessee has been abated as per Rule 22 of the CESTAT (Procedure) Rules, 1982¹⁰ and the Tribunal becomes *functus officio*. The CESTAT by its order dated 9.11.2023 held that the appeal of the assessee has abated as per Rule 22 of the 1982 Rules. Being aggrieved, the present appeal is filed.

¹⁰ Hereinafter referred to as '1982 Rules'

5. This Court by order dated 2.9.2024 admitted the above appeal to consider the following substantial question of law:

"A) Whether the Appellate Tribunal erred in law as well as on facts while not following the law laid down, amongst others, by the Hon'ble Supreme Court that with respect to demand(s) for which no claims were submitted and which were not part of the approved Resolution Plan, as in present case, all the dues relating to the same stand extinguished and no proceedings in respect of such dues can be continued?"

6. Heard the submissions of learned Counsel Sri Rajesh Rawal for learned Counsel Sri K.P.Chandrashekar Reddy for the appellant-assessee and learned Counsel Sri Jeevan J.Neeralgi for the respondent – revenue.

7. Learned Counsel for the appellant-assessee contends that admittedly, CIRP proceedings were ordered against the assessee – Ruchi Soya and consequent to the modified resolution plan approved by the committee of creditors during the CIRP, which has been approved by the NCLT, Patanjali has continued the business of Ruchi Soya. It

is further contended that the revenue did not make a claim before the IRP with regard to the Excise Duty demanded and having regard to Section 32A of the IBC and the judgments of the Hon'ble Supreme Court passed in the cases of ***Ghanshyam Mishra v. Edelweiss Reconstruction Company Ltd.***,¹¹ as also ***Ruchi Soya Industries Limited v. Union of India***¹², the demand against the assessee has abated and the liability whatsoever has extinguished. It is further contended that a Division Bench of the Gujarat High Court in the case of ***Commissioner of Customs v. Patanjali Foods Limited (Formerly Ruchi Soya Industries Limited)***¹³, the case of the appellant itself, has also followed the dicta laid down by the Hon'ble Supreme Court in the case of ***Ghanshyam Mishra***¹⁰ and ***Ruchi Soya Industries Ltd.***,¹¹. It is further contended that reliance placed by the Tribunal on Rule 22 of the 1982 Rules to hold that the appeal has abated is erroneous and contrary to the

¹¹ (2021) 9 SCC 657

¹² (2022) 6 SCC 343

¹³ Order dated 25.8.2022 passed in Tax Appeal No.32/2019

decisions of the Hon'ble Supreme Court as noticed above. Hence, he seeks for allowing the appeal and granting the reliefs sought for.

8. Per contra, learned Counsel for the respondent - revenue does not dispute the position of law as laid down by the Hon'ble Supreme Court in the case of **Ghanshyam Mishra¹⁰** and **Ruchi Soya Industries Ltd.,¹¹**. However, it is contended by the learned counsel that by virtue of the Order-in-original and pursuant to the show cause notice dated 26.3.2012, an Excise Duty of ₹8,06,44,997/- for the period 14.7.2009 to 26.8.2011 was confirmed and a sum of ₹2,97,29,891/- having been appropriated, a demand of ₹5,09,15,106/- was made. It is further contended that even as per the judgment of the Hon'ble Supreme Court in the case of **Ghanshyam Mishra¹⁰** and **Ruchi Soya Industries Ltd.,¹¹**, at best, the demand of ₹5,09,15,106/- would stand abated/extinguished and not the Excise Duty of ₹8,06,44,997/- which was confirmed by the Order-in-Original. Hence, it is contended that by virtue of the dicta of

the Hon'ble Supreme Court as noticed above, the assessee will not be entitled to claim any refund from the revenue. Hence, he seeks for suitable orders in this regard.

9. In response to the contention of the learned counsel for the revenue that the assessee will not be entitled to claim refund of a sum of ₹2,97,29,891/- that has been appropriated by the revenue, the learned counsel for the assessee vehemently contends that the demand having originated by virtue of the show cause notice dated 26.3.2012 and having regard to the dicta of the Hon'ble Supreme Court, the assessee would be entitled for the refund of the amount appropriated also.

10. The submissions of both the learned counsels have been considered and the material on record have been perused.

11. The relevant fact situation as noticed above is undisputed, insofar as issuance of the show cause notice dated 26.3.2012 as also the Order-in-Original. The

proceedings initiated against Ruchi Soya under the IBC are also a matter of record. Hence, from the aforementioned, it is clear that during the pendency of the appeal before the CESTAT, the proceedings under IBC against Ruchi Soya had commenced and also culminated with the acceptance of the modified resolution plan, consequent to which Patanjali has continued the business of Ruchi Soya, which is also forthcoming from the certificate dated 24.6.2022. It is further undisputed that the revenue has not made any claim before the IRP during CIRP process under the IBC.

12. The Hon'ble Supreme Court in the case of **Ghanshyam Misha¹⁰** was considering the following questions:

"2 (i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by an adjudicating authority under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the I&B Code")?

(ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory/declaratory or substantive in nature?

(iii) As to whether after approval of resolution plan by the adjudicating authority a creditor including the Central

Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the corporate debtor, which are not a part of the resolution plan approved by the adjudicating authority?"

(emphasis supplied)

12.1. The Hon'ble Supreme Court answered the said questions as follows:

"102. In the result, we answer the questions framed by us as under:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.2. The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

(emphasis supplied)

13. The Hon'ble Supreme Court in the case of **Ruchi Soya Industries Ltd.**,¹¹ was considering the following questions:

"6. The short point that is involved is as to whether the claim of the present respondent which was admittedly not lodged before the resolution professional after public notices were issued under Sections 13 and 15 IBC could be considered at this stage."

(emphasis supplied)

13.1. After noticing its earlier judgment in the case of **Ghanshaym Mishra**¹⁰ it has held as follows:

"11. Admittedly, the claim in respect of the demand which is the subject-matter of the present proceedings was not lodged by Respondent 2 after public announcements were issued under Sections 13 and 15 IBC. As such, on the date on which the resolution plan was approved by the learned NCLT, all claims stood frozen, and no claim, which is not a part of the resolution plan, would survive.

12. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the resolution plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."

(emphasis supplied)

14. It is clear from the aforementioned that the revenue not having made any claim before the IRP during the CIRP process and the demand not having been part of the resolution plan, has stood extinguished and cannot be continued.

15. It is relevant to note that a Division Bench of the Gujarat High Court in the case of ***The Commissioner of Customs***¹³, while considering an appeal filed by the revenue in the case of Patanjali after noticing Section 32A of the IBC as well as the amended Section 31 of the IBC as also the judgment of the Hon'ble Supreme Court in the case of ***Ghanshyam Mishra***¹⁰ has held as follows:

"14. Thus taking into consideration the fact of the completion of the resolution process of the respondent by the NCLT and undisputed fact that the appellant has not lodged any claim in the capacity of the Operational Creditor before the Resolution Professional, this appeal is required to be disposed of as having become infructuous and abated with regard to any liability of any nature whatsoever having extinguished in view of the implementation of the Resolution Plan and change in management and control of the C/TAXAP/18/2019 ORDER DATED: 25/08/2022 assessee in view of the provisions of section 31 and section 32A of the IBC as fortified by the above orders passed by the Apex Court."

(emphasis supplied)

16. Having regard to the position of law as noticed above, the demand of the revenue against the assessee cannot be continued.

17. Having regard to the contention of the learned Counsel for the revenue that the assessee will not be entitled to claim refund of the sum of ₹2,97,29,891/-, which has been appropriated pursuant to the Order-in-Original, it is relevant to note that pursuant to the Order-in-Original where the demand of ₹8,06,44,997/- was confirmed and a sum of ₹2,97,29,891/- was appropriated, the revenue raised the demand of ₹5,09,15,106/- which was prior to the initiation of the CIRP proceedings under the IBC. In the appeal filed by the assessee before the CESTAT, it is forthcoming from column 9 of the memorandum of appeal that the demand of duty that was challenged by the assessee was a sum of ₹5,09,15,106/- The said demand was the subject matter of appeal before the CESTAT. It is further relevant to note that the revenue has not made any claim for the said sum of ₹5,09,15,106/- before the IRP, since it had already recovered

a sum of ₹2,97,29,891/-, which it had appropriated as noticed in the order in original. The non making of the claim by the revenue before the IRP has, now by virtue of the judgment of the Hon'ble Supreme Court in the case of **Ghanshaym Mishra**¹⁰ and **Ruchi Soya Industries Ltd.**,¹¹ held to have been extinguished. Hence, there is justification in the submission made by the learned counsel for the revenue that the assessee will not be entitled to seek for refund of the sum of ₹2,97,29,891/- appropriated by the revenue by the Order-in-Original. Accordingly, it is made clear that the assessee will not be entitled to seek for refund of the sum of ₹2,97,29,891/- by virtue of the order passed in the present appeal.

18. It is relevant to note that the CESTAT while referring to Rule 22 of the 1982 Rules has held that the appeal has abated. In this context, it is relevant to note Rule 22 of the 1982 Rules, which reads as follows:

"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 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."

19. It is clear from a reading of the same that in the event a party to the appeal dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal would abate. However, in the present case, it is relevant to note the following provisions of the IBC.

"(5) Definitions:

5(12) "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be;

5(17) "liquidation commencement date" means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be;

5(26) "**resolution plan**" means a plan proposed by ⁷[resolution applicant] for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;

⁸Explanation.- For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;

20. It is clear from Section 5(26) of the IBC as noticed above that the resolution plan is proposed by the applicant for continuing the business of the company as "a going concern". It is forthcoming that under the Scheme of the IBC, Part II contemplates Insolvency Resolution and Liquidation for Corporate Persons. Chapter II in Part II contemplates Corporate Insolvency Resolution Process and Section 6 to Section 32A deals with the same. Chapter III in Part contemplates Liquidation Process and Section 33 to Section 54 deals with the same. Hence, it is clear that by a resolution process the company continues its business and only by a liquidation process, the business of the company would be wound up.

21. In the present case, the resolution plan in respect of the assessee having been accepted by the Tribunal, the question of the assessee being wound up does not arise. Hence, it is clear that Rule 22 of the 1982 Rules would not be attracted in a case where the resolution plan has been approved by the IBC. Hence, the Tribunal *ex facie* erred in holding that by virtue of Rule 22 of the 1982 Rules, the appeal would abate.

22. In view of the discussion made above, the substantial question of law is answered in favour of the assessee and against the revenue.

23. In view of the aforementioned, the following:

ORDER

- (i) The appeal is allowed.
- (ii) The Final Order No.21234/2023 passed in Excise Appeal No.25387/2013 dated 9.11.2023 by the Customs, Excise and Service Tax Appellate Tribunal, Bangalore, is set aside.

(iii) The Miscellaneous Applications filed by the assessee before the CESTAT are allowed and it is held that the demand of ₹5,09,15,106/- made by the revenue against the assessee pursuant to the Order-in-Original passed on 2.11.2012 and issued on 8.11.2012 has abated and has stood extinguished.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(C.M. POONACHA)
JUDGE**

Nd/-