



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/TAX APPEAL NO. 1270 of 2006**

**With**

**CIVIL APPLICATION (DIRECTION) NO. 1 of 2024**

**In R/TAX APPEAL NO. 1270 of 2006**

**With**

**CIVIL APPLICATION (OJ) (FOR AMMENDMENT) NO. 2 of 2024**

**In R/TAX APPEAL NO. 1270 of 2006**

**With**

**R/TAX APPEAL NO. 1271 of 2006**

**With**

**CIVIL APPLICATION (DIRECTION) NO. 1 of 2024**

**In R/TAX APPEAL NO. 1271 of 2006**

**With**

**CIVIL APPLICATION (OJ) (FOR AMMENDMENT) NO. 2 of 2024**

**In R/TAX APPEAL NO. 1271 of 2006**

**With**

**R/TAX APPEAL NO. 40 of 2007**

**With**

**CIVIL APPLICATION (FOR AMENDMENT) NO. 1 of 2024**

**In R/TAX APPEAL NO. 40 of 2007**

**With**

**CIVIL APPLICATION (OJ) NO. 2 of 2007**

**In R/TAX APPEAL NO. 40 of 2007**

**With**

**CIVIL APPLICATION (OJ) (FOR ADDITIONAL EVIDENCE) NO. 2 of 2024**

**In R/TAX APPEAL NO. 40 of 2007**

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**COMMISSIONER OF CUSTOMS (PREVENTIVE)**

**Versus**

**M/S. GENERAL FOODS LTD.**

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**Appearance:**

**MR SIDDHARTH H DAVE(5306) for the Appellant(s) No. 1**

**MR DIPEN DESAI(2481) for the Opponent(s) No. 1**

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**CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

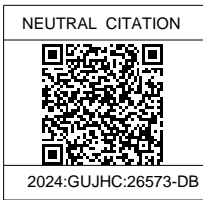
**and**

**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

**Date : 01/05/2024**

**COMMON ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**



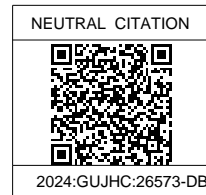
[1] R/Tax Appeal No.1270 of 2006 arises out of the order dated 4<sup>th</sup> April 2006 passed in Appeal No.C/19 to 21/06 Mum by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short, “the Tribunal”) under Section 130 of the Customs Act, 1962 (for short, “the Act”).

[2] This Court, vide order dated 11<sup>th</sup> July 2007, admitted R/Tax Appeal No.1270 of 2006 of the following substantial questions of law:

*“(A) Whether or not Tribunal has erred in relying upon the report of the private laboratory in holding that carotene content in Crude Palm Oil will be reduced by passage of time, whereas CRCL New Delhi informed that the Standard Technical Literature do not find mention about the degradation/reduction of carotenoid content (as beta carotene) due to passage of time, change in atmosphere condition and temperature?”*

*“(B) Whether or not benefit of Notification No.21/2002 – Cus dated 01.03.2002 as amended would have been granted to the respondents, ignoring the test report of the Chemical Examiner and the Chief Chemist of the Government and relying upon the test opinion of the private laboratory?”*

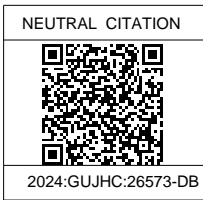
[3] At the outset, learned advocate Mr. Dipen Desai for the respondent submitted that these Tax Appeals would not survive qua the respondent and the same would abate in view of the reasoning assigned by this Court in similar R/Tax Appeal No.32 of



2019. It was pointed out that the respondent was subject to the resolution proceedings under the provisions of Insolvency and Bankruptcy Code, 2016 (for short, “the IBC”) after the respondent was merged with M/s. Ruchi Soya Industries Limited in the year 2006 and later on, M/s. Ruchi Soya Industries Limited was subjected to the proceedings under the provisions of the IBC.

[4] M/s. Patanjali Foods Limited has been declared successful in the resolution process to take over M/s. Ruchi Soya Industries Limited and the Resolution Plan was approved by the National Company Law Tribunal vide order dated 24<sup>th</sup> July 2019.

[5] It was submitted that similar facts were recorded by this Court vide order dated 25<sup>th</sup> August 2022 passed in R/Tax Appeal No.32 of 2019, holding that the said R/Tax Appeal No.32 of 2019 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 assessee in view of the provisions of Sections 31 and 32A of the IBC as per the decision of the Hon’ble Apex Court referred to therein.



[6] On the other hand, learned advocate Mr. Siddharth Dave for the appellant – Revenue could not controvert the aforesaid submissions.

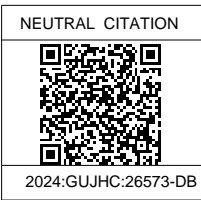
[7] Vide order dated 25<sup>th</sup> August 2022, this Court disposed of R/ Tax Appeal No.32 of 2019 observing as under:

*“6. In view of the above submissions, it is not in dispute that the appellant Commissioner of Customs has not lodged any claim before the Resolution Professional within specified time limit as per the provisions of IBC and the Resolution Plan is approved by NCLT in the year 2019. The issues involved in this appeal pertains to demand for period prior to the approval of the Resolution Plan by the NCLT.*

*7.The Apex Court in case of respondent in Civil Appeal No. 447-448 of 2013, after recording the facts held as under :*

*“Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent no. 2 after public announcements were issued under Sections 13 and 15 of the 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.*

*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.”*

*8. In the facts of the present case also, no claim was filed by the appellant-Commissioner of Customs with regard to demand after the issuance of the notice under IBC for initiation of the resolution process before the Resolution Professional.*

*9. In terms of the provisions of the IBC, Resolution Plan was approved by the Committee of Creditors on 20.04.2019 and thereafter the same was approved by NCLT and the corporate insolvency resolution process was completed on 6.09.2019. It is also not in dispute that plan has been successfully implemented and consequently change in control and ownership of the respondent has taken place with effect from 18.12.2019 and there is no involvement of any erstwhile directors on the promoters Board of and erstwhile Directors of respondent.*

*10. Section 32A of the IBC insofar as it is relevant for the present, reads as under :*

*“(1) Notwithstanding anything to the contrary in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not -*



*(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or*

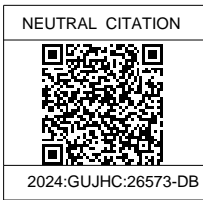
*(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:*

*Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan 'subject to requirements of this sub-section having fulfilled.'*

*11. In view of above provisions which clarifies that upon completion of corporate insolvency resolution process, even liability of corporate debtor for an offence committed earlier would cease and hence the appellant department cannot proceed further with the present appeal in absence of any claim lodged with the Resolution Professional during the insolvency resolution process before the NCLT.*

*12. Section 31 of the IBC is also amended with effect from 16.08.2019 and reads as under:*

*“1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the*



*payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed....."*

*13. The Hon'ble Apex Court in case of Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction reported in (2021) 9 SCC 657, while dealing with such issues and provisions of the IBC held as under :*

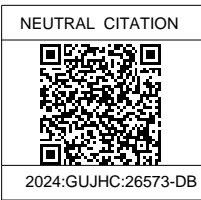
*"102. In the result, we answer the questions framed by us as under:*

*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. 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 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. "*

*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 to infructuous and abated with regard to any liability of any nature whatsoever having extinguished in view of the implementation of the management Resolution and change in management and control of the 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.*

*15. The appeal accordingly stands disposed of as abated and the proposed questions are accordingly not answered.”*

[8] In view of the above, as the facts are identical, these Tax Appeals are disposed of as abated and the proposed questions are, accordingly, not answered.

[9] In view of disposal of the Tax Appeals, Civil Applications would not survive and are, accordingly, disposed of.

**(BHARGAV D. KARIA, J)**

**(NIRAL R. MEHTA, J)**

CHANDRESH