

Collector of Central Excise Vs. Nektar Fruit Products

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-1996

Reported in : (1996)(88)ELT421TriDel

Appellant : Collector of Central Excise

Respondent : Nektar Fruit Products

Judgement :

1. The correct classification of the product known as "Sweet corn cream style", whether under subheading 1904.90 as confirmed by the Collector (Appeals) or under sub-heading 2107.91 as contended by the Revenue, is the issue for decision in this appeal which has been preferred by the Revenue against the order of the Collector of Central Excise (Appeals), Madras.

2. We have heard Shri A.K. Madan, learned DR and perused the records.

None has appeared for the respondents inspite of issue of notice of hearing on 26-7-1996. The process of manufacture of the disputed item is as under : "The com cobs are received directly from the fields as a main/major raw material and the corn kernels are separated from the cob manually. The kernels are collected in aluminium vessels and properly cleaned, washed in water in a steam jacketed kettle. A portion of corn kernels are crushed in the mincer also. The minced com alongwith its liquid substance are added to kettle where in the whole kernels (uncrushed ones) are in the cooking process, Starch purchased from M/s. Weikfield Poona Maize Products, Ahmedabad are being added at a particular

stage with prepared and filtered solution of salt and sugar mixed with the products during the process of manufacture already in the kettle. The product is further cooked and at a particular temperature quality parameters are checked and filled in cans. The cans are sealed and further processed under steam pressure and then cooled in cold water tanks.

The cooled cans are removed wiped, dried and stacked in intransit godown for incubation purpose. After the product passes through the incubation period, the cans are packed in cartons stored in bonded store room for clearances." 3. The Assistant Collector held that the item was a pre-cooked corn product and hence, excluded by virtue of the second part of Heading 19.04 which excluded "corn in grain form, pre-cooked or otherwise prepared." He upheld the classification of this item under Heading 2107.91 as edible preparations note elsewhere specified. The Lowder Appellate authority, has held that the sweet corn is prepared food of cereal product and cannot be said to be in grain form pre-cooked or otherwise prepared, when only one-third is in grain form in the prepared food, the other part being in minced and mashed form. He therefore, held that it would not be excluded from Heading 19.04 but would be covered by the expression "prepared foods obtained by swelling or roasting of cereals or cereal products," as the maize obtained in grain form is soaked and swelled and cooked. The learned DR rightly points out that from the process of manufacture as set out above, it is clear that cereal is in grain form and it is pre-cooked or otherwise prepared and is not obtained only by swelling of cereals or cereal products, which type of product alone would be covered by the first clause of Heading 19.04. In other words, it is the contention of the learned DR that prepared food obtained only by the process of swelling or roasting of cereals or cereal products would fall for classification under Heading 19.04, and since the item in question involves pre-cooking and is a preparation fit for use either directly or after processing such as cooking, dissolving or boiling in water; milk or other liquid for human consumption, it falls for classification under Heading 21.07 by applying Chapter Notes 5(b) and (c) to Chapter 21. We see great force in the contention of the learned Dr. The Collector (Appeals) has emphasised only the process of swelling of cereals and has not considered the entire process of Manufacture which includes mincing and addition of salt and sugar after cooking. The corn is in grain form and is pre-cooked and is, therefore,

a prepared food obtained by application of several processes. Hence, it is excluded from Heading 19.04 and is appropriately classifiable under Heading 2107.91 which covers edible preparations not elsewhere specified or included, put up in unit containers and ordinarily intended for sale.

4. In the light of the above discussion, we hold that sweet corn cream style prepared by the respondents herein is to be classified under sub-heading 2107.91 of the Central Excise Tariff Act, 1985, set aside the impugned order of the Collector (Appeals) and allow the appeal.

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