ivp Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-05-1999

Reported in : (1999)(112)ELT215Tri(Mum.)bai

Appellant : ivp Limited

Respondent : Commissioner of Central Excise

Judgement :
1. The appellant manufactured special vegetable non essential oil and subjected it to processing with alkali, bleaching and hydrogenation, resulting in coming into existence of hardened technical oils. Such hardened technical oil was sold to manufacturers of soap, removal being under Chapter X procedure. The appellant claimed the benefit of Notification 33/63 as amended in respect of the oil so utilised. The notification exempts inter alia processed vegetable non essential oils falling under Item 12 of the tariff if used in the manufacture of soap.

The notification provides for the procedure under Rule 56A to be followed if the oil used in a factory other than the factory of its production. The Explanation to the notification explains that processed non essential vegetable oil are that which are subject to any one or more following processes, treatment with alkali or acid, bleaching and deodprization.

2. Notice was issued to the appellant proposing denial of the notification on the ground (not entirely hydrogenated) that oil subjected to hydrogenation was not processed oil and proposing to recovery the duty on the oil so used. The assessee

took the stand that hydrogenation of oil does not amount to manufacture and that oil even after hydrogenation continued to remain oil. For this proposition it cited the judgment of the Supreme Court in Collector v. Jayant Oil Mills -1989 (40) E.L.T. 287. The Collector, however, did not agree. He said that processed oil, which was further processed resulting in hardened technical oil, would not be eligible for the benefit of exemption. Hence this appeal.

3. The Advocate for the appellant contends that conversion of processed vegetable oil by hydrogenation into hardened technical oil does not result in the manufacture of vegetable oil classifiable under Item 13 of the tariff. It continues to be remaining as processed vegetable oil.

He cites the judgment of the Supreme Court in Collector v. Jayant Oil Mills. He contends that the Tribunal had decided this specific issue, availment of the notification in such circumstances in Tata Oil Mills Co. Ltd. v. Collector - 1983 (13) E.L.T. 999. Departmental representative emphasised that hydrogenation is a complex process involving the basic chemistry of the oil and emerging a different commodity altogether. He further contends that as a result of the hydrogenation the oil in question does not conform to the definition given in the explanation to the notification of processed oil and the benefit of notification is not available.

4. In its judgment in Jayant Oil Mills the Supreme Court held that hardened rice bran oil having a melting point between 45C and 52C was not edible by human beings and that such oil also known as extra hardened oil or super hardened oil, would not be classifiable under Item 13 of the tariff and would continue to remain classifiable under Item 12. It noted the judgment of the Court in Tungabhadra Industries v. Commercial Tax Officer - AIR 1961 SC 412 that groundnut oil continue to be groundnut oil notwithstanding that it was subjected to the process of hydrogenation which was merely for rendering the oil stable.

It therefore held that extra hardened edible oil falling under Item 12 continues even after extra hardening under that item. These two decisions of the Supreme Court show that unless hydrogenation of oil results into classifiable under Item 13 of the tariff as vegetable oil it continues to remain classifiable as oil in Item 12 notwithstanding such hydrogenation. Processed oil classified under Item 12 therefore continues, in these circumstances, to occupy in the same heading. To continue, in other words to be groundnut oil.

5. The Explanation to Notification 33/63 defines processing referred in that notification with reference to one or more processes specified therein. The question is whether the oil so processed ceased to be such processed oil solely because it had undergone a further process of hardening The answer emerging is in the negative. Hardening is a further process to which oil had already been subjected. Unless the process of hardening has the effect of reversing the changes brought about by any of the processes referred to in the Explanation to which the oil had been subjected, the fact that what was applied to, would not remove the oil from the scope of the term "processed oil" occurring in the notification. The notification would therefore continue to be available. The decision of the Tribunal in Tata Oil Mills Co. Ltd. v.Collector of Customs was in fact to this effect that processed oil would not be disentitled to the benefit of the notification and because it was hardened by hydrogenation before being used in the manufacture of soap. The benefit of the notification therefore available to the oil in question.