

Collector of Central Excise Vs. Nestle (India) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-14-1999

Reported in : (2000)(115)ELT688TriDel

Appellant : Collector of Central Excise

Respondent : Nestle (India) Ltd.

Judgement :

1. The Revenue is aggrieved by the order of the Collector of Central Excise (Appeals), Chandigarh, who has found that the product, "preparation of Maltose and Dextrose" in which the reducing sugar (expressed as anhydrous) amounts to less than 50% by weight is not marketable and hence not excisable - according to the Department the said preparation is the result of manufacture, it is stable and marketable and classifiable under Tariff Item 1E(1) of the Schedule to the Erstwhile Central Excise Tariff prior to 28-2-1986 and under CET sub-heading 1702.30 after 1-3-1986.
2. We have heard Shri R.S. Sangia, learned DR and Shri Ravindra Narain, learned Advocate for the assesseees.
3. Tariff Item 1E(1) of the Schedule to the CETA 1985 includes "Glucose in whatever form, including liquid glucose, dextrose monohydrate and anhydrous dextrose" and CET sub-heading 1702.30 includes other sugars, including chemically pure lactose, maltose, glucose and fructose in any form.

4. We find that the issue in dispute is settled by the decision of the Tribunal in the case of Wockhardt Ltd. v. Commissioner of Central Excise, Vadodara reported in 1999 (30) RLT 792, in which maltodextrin solution (hydrolysed starch) has been held to be non-marketable and hence not excisable, following the Apex Court decision in the case of Ambalal Sarabhai Enterprises reported in 1989 (43) E.L.T. 214 (S.C.).

The claim of the respondents herein that their product is hydrolysed starch (obtained from enzymatic hydrolysis of tapioca/maize starch has not been rebutted, and indeed the show cause notice dated 16-8-1988 issued to the respondents herein, proceeded on the basis that the product was a modified starch falling under Tariff Item 15C of the schedule to the erstwhile Central Excise Tariff for the period upto 28-2-1986, and under CET sub-heading 3505 after 1-3-1986 and the contention of the learned DR that the product cannot be hydrolysed starch since there is no starch content in the disputed product is 19/1153 contrary to the Department's own case as reflected in the show cause notice. The further submission of the learned DR that the respondents themselves do not contest its marketability since they used to purchased it from M/s. Sukhjit Starch and Chemicals Ltd. is not correct, as what was purchased was maltodextrin solution, which had a solid content of over 75%; while the solid content in the disputed product has been found to be between 50 to 51%. The reliance placed by the learned DR on sale of maltodextrin by M/s. Lakshmi Starch does not advance the plea of the Revenue since M/s. Lakshmi Starch marketed maltodextrin in powder form and not solution form. Learned DR relies upon the test report dated 8-5-1986/12-5-1986 in respect of samples drawn on 11-4-1986 to support his contention that the product in dispute is stable and hence marketable - however, in the absence of any finding in the report that the product is stable and in the absence of the date of testing of samples drawn on 11-4-1986, the test report cannot clinch the matter regarding the stable nature of the product.

The Cadbury India Ltd. decision reported in 1998 (104) E.L.T. 457 relied upon by the learned DR also does not help the Revenue as the appellants in that case only submitted that the product was not marketed by them, and did not put forth any evidence that the sugar syrup was unstable and, therefore, non-marketable, while

in the present case, it has been the consistent claim of the respondents that the product is unstable and retrogradation takes place at room temperature, hence rendering the product unstable for any use and this claim has not been controverted.

5. Thus viewed from all angles, the ratio of the Tribunal's decision in the case of Wockhardt Ltd. v. Commissioner of Central Excise, Vadodam cited supra, squarely applies to the present case and hence following the same, we uphold the impugned order and reject the appeal.

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