Markfed Vanaspati and Allied Vs. Commissioner of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/17749

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-25-2000

Reported in : (2002)(146)ELT474TriDel

Appellant : Markfed Vanaspati and Allied

Respondent : Commissioner of C. Ex.

Judgement :

1. These are four appeals. Appeal Nos. E/32/90-C and E/299/90-C are filed by the parties and remaining two appeals are filed by the department involving common issue and, accordingly, they are taken together and are being disposed of by this common order.

2. These matters have come on board on several times awaiting decision of the Larger Bench on the issue involved herein.

3. The point to be considered in these appeals is as to whether spent earth is liable to excise duty or not. It was brought to our notice that decision of the Larger Bench is out as per Order Nos.

102-105/99-C, dated 12-11-1999 in the case of M/s. Markfed Vanaspati & Allied Industries and Ors., reported in 2000 (36) RLT 170. In that case, it was clearly held that spent earth is not liable to excise duty. Further it was observed that appeals involving question of excisability of spent earth shall now be posted by the Registry before the concerned Bench for final disposal.

4. Shri K. Srivastava appearing for the Revenue submitted that he has raised some basic points during the course of hearing the matter before the Larger Bench but the same has not been considered as can be seen from the order passed by the Larger Bench and requires to be reconsidered. The plea taken by the D.R. cannot be looked into by the Bench at this stage since Division Bench is not empowered to review the order of the Larger Bench and on the other hand, we are bound by the decision of the Larger Bench, as per judicial discipline.

5. Since the issue involved herein has already been considered and concluded by the Larger Bench, following the same, we hold that 'spent earth' is not excisable being not manufactured product. Accordingly, these appeals are disposed of in the above terms.