

Madhusudan Vegetable Products Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-11-1985

Reported in : (1985)(5)LC1564Tri(Delhi)

Appellant : Madhusudan Vegetable Products

Respondent : Collector of Central Excise

Judgement :

1. Because Notification No. 209/76-C.E., dated 1-7-1976 was rescinded from 28-1-1978 the Assistant Collector, Central Excise, Ahmedabad, NG Division ordered that the concession was no longer available to the vegetable product even though indigenous cotton seed oil was used in its manufacture and it was cleared between 1-1-1978 and 27-1-1978. The Assistant Collector therefore, rejected M/s. Madhusudan Vegetable Products Co.'s claim for Rs. 11,301.62 by his Order No. V.13/30-109/MP/78/ 17021, dated 27-7-1979. The Collector of Central Excise (Appeals), Bombay agreed with the Assistant Collector and rejected the factory's appeal by his Order No. 800/AMD-6/81, dated 28-7-1981, though he said the subject of the Vegetable Products Control Order discussed by the Asstt. Collector would not affect the ultimate findings.

2. Mr. N.I. Mehta argued before us that the two lower courts were wrong. The vegetable product on which they claimed the rebate was fully entitled to the concession. There was nothing in Notification No.209/76-C.E., to warrant the Asstt. Collector and the Collector's arguments. They did not ask for concession in respect of a period after the cancellation of the concession. The period for which

they ask the concession was fully within the period when the notification was alive and in operation.

3. The learned counsel for the department said that when the claim was made in March, 1978 the concession had been withdrawn. The calculations were to be made for periods Jan/June and July/December. The time when their vegetable product was cleared was only a part of the full 6 months period necessary for calculation. Since the time 1-1-1978 to 27-1-1978 formed only a part of a complete 6 months calculation period, the concession was not available to the vegetable product cleared then.

4. The department is wrong, and we set aside the Collector (Appeals)'s order and the Asstt. Collector's order.

5. Notification No. 209/76-C.E. gave exemption to vegetable product falling under 13-CET : "in the manufacture of which indigenous cotton seed oil is used and such vegetable product is cleared from a factory during the period of 6 months commencing on 1-7-1966 and ending with 31-12-1976 and thereafter during every six months commencing 1st January or the 1st July, as the case may be, ..." There is a table for calculating the duty exempted and a few other stipulations. What interests us is the reasoning that the notification emphasises the six months period commencing in January and in July, as the case may be. The Asstt. Collector said the total clearance of vegetable product from the factory was to be taken while allowing the rebate. This condition was not fulfilled "as the Notification No.209/76 has been operating during the subsequent period", (he possibly means "not been operating"), and so the factory would not have exceeded .30% limit specified. This is strange argument. If the factory had less than 30% indigenous cotton oil and if the notification gives no concession for it, why, then, reject the claim. But it is no good saying "quite possible the percentage of indigenous cotton seed oil would not have exceeded the limit of 30%" we cannot go by "possible" ; we want facts and facts are rather scarce in the Asstt. Collector's order.

6. Next he says that since the notification was not in existence for the . six month period of which the 27 days form a part, no rebate could be granted : but the Asstt. Collector does not say how he arrived at this conclusion.

7. The Collector (Appeals) correctly rejects the Asstt. Collector's assumption about the vegetable products control order but his reasonings are. very difficult to understand. He says "in the normal course, the amount of vegetable product would have been worked out at the end of six months i.e. after 30-6-1978. But the notification entitling the rebate was itself rescinded on 28-1-1978". Had the normal course been available the notification would have run up to 30-6-1978.

But since it was rescinded before it ran that normal course, it was a condensed course that was available. But first of all, there was nothing about a "normal course" in the notification. It only required that the vegetable product should be cleared from the factory during the period of six months designated by the law. Nor is there anything about working out the rebate only at the end of six month rhythm and at no other time. The six month spell is certainly convenient for calculations for more reasons than one. But there is not a word in the law that forbids working out the rebate for a shorter time within any of the six-month cycle. If the vegetable products made by using the requisite quantity of the right oil was cleared during a six-month circuit, it must be given the concession. This claim was in respect of vegetable product cleared between 1-1-1978 and 27-1-1978 i.e. during the six-month cycle commencing 1st January, 1978. Notification No.209/76-C.E. was valid during these 27 days. But we do not know the percent-age of indigenous cotton oil used in its manufacture ; only the Central Excise assessing officer has these details.

We direct the Central Excise assessing authorities to find out the percent-' age of cotton oil used. If the vegetable product contained the right proportion of the right oil, concession appropriate under Notification No. 209/76-C.E. shall be given to M/s. Madhusudan Vegetable Products Co. Limited, the appellants.

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