

Pardes Dehydration Co. Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-29-2001

Appellant : Pardes Dehydration Co.

Respondent : Commissioner of Central Excise,

Judgement :

1. Appellant is absent but has requested for disposal on merits. I have heard Shri George for the Revenue.
2. The appellants were engaged in the dehydration of garlic and onion.

Such goods fell under Item 1(B) of the erstwhile Tariff and under Chapter sub-heading 0701.10 of CETA, 1985 from 28.2.86. Manufacturers of excisable products are required to secure a licence from the Central Excise Authorities in terms of Rule 174(A) of the Central Excise Rules, 1944. Notification issued under that rule permits waiver from licensing regulation provided that a declaration is filed by the manufacturer every year. The present appellants, however, filed a civil suit before the Civil Court, Rajkot in 1984. This was disposed of by the Court in February 1995 directing the department to issue a show cause notice.

Accordingly, show cause notice was issued on 8.2.1995 directing the appellants to file the requisite declaration. However, in reply to the show cause notice, they accepted not having filed the declaration. The Asstt. Collector imposed penalty of Rs. 15,000/- on them for their persistent failure for filing the declaration. The Commissioner maintained that order resulting in this appeal. In his order, the

Commissioner expressed his displeasure at the tactics adopted by the appellant of first going to the Court. He also found fault with their claim of having filed declarations for the year 1984-95 to 1989-90. He also observed that the appellants behaved in a contrarious manner during the appeal proceedings. He held that it was not doubted that the products manufactured by the appellants were excisable and dutiable. He held that even if the goods were exempted, the exemption prescribed under the notification was at slab rates and that the declaration alone will enable the department to ascertain the value of the clearance made.

3. In the appeal memorandum, contest has been made of the penalty by citing case laws. One of the case law cited is Bombay Marine Engineering Works - 1982(10)ELT 80. In this case, it was held that penalty was not leviable on a contravention arising out of confusion.

The conduct of the appellants during the period does not indicate lack of knowledge so as to confuse them. The Supreme Court have held that penalty is civil liability and is attracted even if the absence of malafide.

4. On consideration of the logic of the Collector(Appeals) and the various submissions made by the appellants, I find that there is no reason for interfering with the orders of the Collector(Appeals). The appeal is dismissed.

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