Vijay Solvent Extraction Vs. Commissioner of Central Excise,

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SooperKanoon Citation : sooperkanoon.com/26609

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-07-2001

Appellant : Vijay Solvent Extraction

Respondent : Commissioner of Central Excise,

Judgement :

2. The applicant has leased to Vijay Oil Mills its solvent extraction plant in which it extracted oil by solvent extraction, for which it had a Central Excise licence. The licence continued to be in the name of the appellant. The classification list in which exemption was claimed for the oil produced in terms of notification 262/86 was filed by the applicant. The gate passes and RT12 Returns were also filed by the applicant. Notification 262/86 grants exemption from duty to the solvent extraction oil which satisfies inter alia the condition that they produce a certificate by the Director of Vanaspati to have been manufactured by using the solvent extraction process. The certificate that the applicant produced in support of its claim was addressed to Vijay Oil Mills. The Assistant Commissioner, whose order has been confirmed by Commissioner (Appeals), has held that the certificate will not be available to grant exemption to the goods which on the record the applicant has manufactured.

3. On an identical issue, the Tribunal, in its decision in the applicant's own case 2000 (36) RLT 505 declined to hold that the certificate issued to Vijay Oil Mills was valid in order for the applicant to claim the exemption. On the face of it, therefore, the issue is settled against the applicant.

4. The counsel for the applicant however raises a fresh point. This is that the Commissioner (Appeals) himself find that the manufacturer of the goods is not the applicant but Vijay Oil Mills. In that case, he says, the applicant would not be required to pay any duty at all and the entire duty liability would fall upon Vijay Oil Mills.

5. We note the departmental representative's emphasis that the issue is covered by the earlier decision of the Tribunal. At the same time, however, the specific finding of the Commissioner (Appeals) which we have referred to, does throw up a question that is required to be answered, as to whether duty can be demanded, from the applicant, who he finds is not the manufacturer of the goods.

6. In the light of this position, we accept the offer made by the counsel to deposit Rs. 3.00 lakhs within a month from the receipt of this order. On such a deposit we waive deposit of the remaining amount and stay its recovery.