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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-13-2003

Judge : S T S.S., K Kumar

Appellant : Nicholas Piramal (i) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants are aggrieved by the order of the lower authorities by which they were asked to determine and pay duty on 'Sugar Syrup' manufactured and captively consumed during period August 1998 to October 1999. The lower authorities after recording the process of preparation of sugar solution which is as under:- "a) The respondents liquefy 7000 Kgs. Sugar and 2000 Ltrs. Water by providing heat at 100 to 105 C. In the process they get nearly 97 to 100% concentrated liquid of sugar which is high viscose solution.

b) This solution is kept at 70 C temperature to avoid crystallization. This 100% concentration is highly unstable physically and will get converted into lumps at room temperature.

This hot liquid is then added with 1000 Ltrs. Water at 70 C temperature, concentration of which gets reduced to 97% and temperature is reduced at 65 C. c) The solution is then pumped into other vessel in hot condition.

In second vessel, water is added to make syrup having concentration 66.7% and while adding water simultaneously medical ingredients are added upto it.

And relying upon the test report of the departmental chemist concluded that the said sugar syrup was excisable, since it was opined in the test report that the said syrup solution having sugar in concentration of 65% weight or more would have shelf life without addition of any preservation and would thus with marketable.

2. The appellants have submitted and proceed copy of that the test report, in this case which certifies that:- "In view of the above the sample as received if used invisible form at elevated temperature may not be considered stable in the syrup form at room temperature. The solid contents (mainly sugar) is the sample as determined is 77.9% by weight.

In this aspect has not been considered by the lower authorities and when the chemical examiner were certifying that syrup may not be considered stable at room temperature, how the excisability and marketability thereof could be established is not clear from the order.

They relied upon the various decisions on the commercial identity and the test of marketability not having being satisfied to prove the case.

3. After considering the matter on record, it is found that the test report in this case has not been considered and appreciated by the lower authorities. The order is therefore required to be set aside and remitted back to the lower authority, to re-adjudicate the matter after considering the test report in this case. Thereafter they should arrive conclusively based on material whether the goods in question are capable of being marketable and in the market as such i.e. sugar syrup.

The other issues in the remand proceeding are kept open.

4. The appeal is disposed in above terms as remand to the original authority for denovo adjudication.