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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-04-2003

Reported in : (2003)(90)ECC528

Judge : V Agrawal

Appellant : Vijay Solvex Ltd.

Respondent : C.C.E.

Judgement :

1. In this appeal, filed by M/s. Vijay Solvex Ltd., the issue involved is whether the duty is payable by them on the quantity of imported goods received short in their factory.

2. Shri Bipin Garg, learned Advocate, submitted that the Appellants manufacture Hydrogenated Vegetable Oil; that they import Crude Palm Oil, Rape Seed Oil, Crude Degummed Soyabean Oil from abroad and avail concessional rate of Customs duty after complying with the conditions of the Notification and also after complying with the procedure as laid down in the `Commissioner has confirmed the demand of duty on the ground that the quantity of oil received in the factory was less than the quantity cleared under Bill of Entry. The learned Advocate, further, submitted that the imported goods being in liquid form are transported in tankers; that at the port the oil is transferred from ship to the storage tanks of the port authority and thereafter into tankers for transportation; that such type of handling at the port necessarily results in loss of some small quantity of imported

goods; that such handling loss in an unavoidable phenomena in case of handling of liquids and since the quantity is not measured after being transferred into the tankers for onward transportation, no certificate in this regard is issued either by port authorities or by Customs; that as such the quantity received at destination is invariably less than the quantity shown in the clearance documents. He also contended that the sow cause notice itself shows that the quantity of oil in question was not received in their factory; that there is no allegation of non-account al or disposal of the goods by the Appellants and as such duty cannot be demanded under Rule 8 of the Customs Rule, 1996. He relied upon the decision in the case of National Organic Chemical Industries Ltd. vs. C.C. (Import), Mumbai, 2000 (126) ELT 1072 (Tribunal) wherein the Tribunal has held that the importer cannot be called upon to pay duty on the quantity of raw naptha of about 1% which is a volatile substance; that this decision has been confirmed by the Supreme Court as reported in 2002 (142) ELT A280.

3. Countering the arguments Shri S.C. Pushkarna, learned D.R. , submitted that the benefit of exemption is available only when vegetable oil is imported for the manufacture of oil commonly known as vanaspati; that as the quantity received short in the factory has not been used for manufacture of oil commonly known as vanasapati the benefit of notification cannot be extended to them.

4. I have considered the submissions of both the sides. The Commissioner (Appeals) has given a finding the in the impugned Order that during the period June, 1999 to February, 2000 the Appellants had imported 39,709.51 M.T. vegetable oil against which only 39,451.615 M.T. was received in the factory. There was thus short receipt of 257.836 M.T. The Commissioner (Appeals) has upheld the Order-in-Original as the Appellants had neither produced short landing certificate nor sort despatch certificate in support of their claim. I also observe that nothing has been brought on record to show that such a quantity of 257.836 M.T. will be lost in handling oil at the port.

The Appellants have also not brought on record any correspondence exchanged by them with the port authorities about the loss of such a huge quantity in handling. The decision in the case of National Organic Chemicals in not applicable

to the facts of the present matter as the difference in quantity was noticed between notional quantity and the quantity received. In the present matter the quantity mentioned in the Bill on Entry is not notional one. Rule 8 of the Customs Rule 1996 clearly provides that in case the goods imported are not used for the intended purpose the Asst. Commissioner has to take action to recover the amount equal to the difference between duty leviable on such goods but for the exemption and that already paid at the time of importation.

As the quantity received short has not been used for intended purpose the demand of duty has been rightly made under Rule 8 of the Customs Rule, 1996. The appeal is accordingly rejected.

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