

Collector of Central Excise Vs. Captainganj Distillery

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-19-1987

Reported in : (1987)(12)ECC40

Appellant : Collector of Central Excise

Respondent : Captainganj Distillery

Judgement :

1. The question to be decided in this appeal is whether the "Spent Wash" is chargeable to Central Excise duty under Item 68 of the Central Excise Tariff. The Assistant Collector of Central Excise charged duty of Rs. 3,767/- in respect of spent wash cleared by the Appellants. On appeal, the order of the Assistant Collector was set aside by the Collector of Central Excise (Appeals), New Delhi, by the impugned order. The Collector (Appeals) held as follows :- "The appellants have, however, explained that Spent Wash was generated during the course of distillation in their manufacturing premises and as this was water pollutant and was capable of damaging the standing crops etc., they were draining it out to a distance of 1.5 Kms. away from the factory and treating it biologically/chemically. This would demonstrate that Spent Wash as such was neither consumable nor was of any use to the appellant. It is at a distance of 1.5 Kms. away from the factory that it was drained and was made fit for use for irrigation purposes and the water as such was distributed free of cost. The remnant was Sludge which was dried in the open fields and sold as manure. It does not appear that all these processes would require use of electricity or lot of man power. The Assistant

Collector has admitted in the impugned order that the appellant did not intend to manufacture spent wash but they did have interest in it and even sold it. The impugned order does not indicate as to whether any enquiry was conducted to show that the spent wash as such would be put to any other use. Since the factory had to dispose it off in some way or the other without polluting water or without causing damage to the standing crops, they have resorted to biological/chemical treatment on which in any case the appellant must be spending some money.

Spent wash by itself is a waste product and of no use to any one.

Since it is being processed far away from the factory of the appellant, in my view, it won't fall under the definition of excisable goods and would not be liable to duty. In this view of the matter and without going into the applicability of Notifications Nos. 85/79, dated 1-3-1979, 49/81, dated 1-3-1981 as amended by Notification No. 92/81, dated 1-4-1981, I accept the appeal of the appellant and set aside the impugned order passed by the Assistant Collector." The Collector of Central Excise, Allahabad has filed this present appeal against the said impugned order.

2. We have heard Shri A.K. Rajhans, learned J.D.R. for the appellant and Sh. R.R. Agarwal, learned advocate for the respondents.

3. Shri Agarwal has stated that Spent! Wash obtained by the respondents in their distillery during the course of manufacture of alcohols was drained out at a distance of 1.5 Kms. where it was stored in a pond, as "Spent Wash" is damaging to standing crops and is harmful to the human and animal life. Spent-Wash was biologically/chemically treated in that pond and distributed free for the irrigation in the field. During summer when the pond dried up, the dried sludge was sold for use as manure. Thus, the spent wash is a waste material arising out of the manufacture of alcohol. It is not fit for marketing and no duty is, therefore, chargeable on the spent wash in terms of ratio laid down in the judgement of Bombay High Court in the case of M/s. Indian Aluminium Co. Ltd. and Another v. A.K. Bandyopadhyay and Ors. reported in 1980 ELT 146 (Bombay) and this Tribunal's decisions reported in 1984(18) ELT 582 (Tribunal) [Jay Electric Wire Corporation Ltd., Bangalore v. Collector of Central Excise, Mysore Hindustan Lever Limited, Bombay v. Collector of Central Excise, Calcutta 4. Shri A.K. Rajhans,

learned S.D.R. reiterated what has been stated in the appeal memorandum.

5. We have considered the arguments. In Bombay High Court's judgement it was held that Aluminium dross and skimmings were merely refuse, scum or rubbish thrown out in the process of manufacture of Aluminium sheets. These were neither "goods" nor "end product" liable to Central Excise Duty under Tariff Item 27 of Central Excise Tariff. In this connection, the observation of his Lordship in para 24 of the judgement is reproduced below :- ' The question that one must ask oneself is whether therefore dross and skimmings are "goods". It may well be that dross and skimmings may be capable of fetching some sale price. For that matter any rubbish can be sold. But that is not the criterion. It cannot be said that dross and skimmings are the result of treatment, labour or manipulation whereby the end-product is dross and skimmings. They are merely the scum thrown out in the process of manufacture of aluminium sheets. Therefore, it cannot be said that dross and skimmings are transformation resulting in a new and different article with a distinctive name, character or use or that they ordinarily come to the market to be bought and sold and are known to the market. The article or goods manufactured from the aluminium ingots was not dross and skimmings but the aluminium sheets. It was the aluminium sheets therefore what were the end-product or the finished product and not the dross and skimmings which were merely the refuse or scum or rubbish thrown out in the course of the manufacture of the finished product, namely, the aluminium sheets.' In 1984(18) ELT 582, this Tribunal held that scrap obtained in drawing of finer tungsten and molybdenum wire from thicker wire was not a manufactured product falling under Item 68 of Central Excise Tariff. In the case of Hindustan Lever Limited, Bombay v. Collector of Central Excise, Calcutta 1985(22) ELT 232 (Tribunal), this Tribunal also held that spent earth arising from activated earth during soap manufacture was not the result of manufacture under Section 2(f) of the Central Excises and Salt Act, 6. In the present case, the spent-wash is nothing but a waste material arising in the process of manufacture of alcohol. As it has damaging effect to crops and human and animal life, it was drained out by the respondents into a pond at a distance of 1.5 Kms. The spent-wash was not sold as such in the market. The dried sludge which was sold by the respondents was not the result of manufacturing process in their factory. In the circumstances, following the judgement of Bombay High Court

relied upon by the respondents and the earlier decisions of this Tribunal cited by the learned advocate, we hold that no excise duty under Item 68 of Central Excise Tariff is leviable on the spent-wash obtained by the respondents. We, therefore, uphold the order of the Collector (Appeals) and dismiss the appeal filed by the Collector.

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