

Collector of C. Ex. Vs. Oswal Vanaspati and General

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-04-1987

Reported in : (1989)(42)ELT227TriDel

Appellant : Collector of C. Ex.

Respondent : Oswal Vanaspati and General

Judgement :

1. This is an appeal filed by the Collector of Central Excise, Chandigarh against the order of the Collector, Central Excise (Appeals), New Delhi.

2. The brief facts of the case are that M/s. Oswal Vanaspati & General Industries (respondents) who manufacture vegetable product falling under Tariff Item 13 of the Central Excise Tariff, availed of benefit of Notification No. 230/72-C.E., dated 15.12.72 as amended in respect of indigenous cotton seed oil used by them. On a claim filed by them a rebate of Rs. 22,774.25 was allowed by the Assistant Collector.

Subsequently, however, the departmental authorities came in possession of some of the documents which showed that the respondents instead of having used cotton seed oil in the manufacture of vanaspati, had, in fact, used Sarson oil. The Assistant Collector after issue of show cause notice and after giving an opportunity to the appellants held that charges were proved and confirmed the demand of duty of Rs. 22,774.25 against the appellants. On an appeal filed by the respondents, the Collector (Appeals) on appreciation of the facts on record as to the purchase

and supply of cotton seed oil to the respondents, took note of the fact that the Central Excise authorities had drawn samples at three different stages of manufacture and subjected the same to chemical tests which showed that the cotton seed oil had been used in the manufacture of vanaspati.

3. The learned SDR, amongst other grounds, urged that the Collector (Appeals) had taken note of the samples drawn and had given his findings taking into account the results of these samples while no such reliance was placed by the lower authority on such test results nor these were alluded to by the respondents in the proceedings before the Assistant Collector. His plea is that since additional evidence had been taken into consideration by the Collector (Appeals) he should have decided the matter after giving an opportunity to the departmental authorities to make their submissions in regard to this. In terms of Section 35A of the Central Excise Act, he pointed out that in case the Collector (Appeals) takes note of any additional evidence he should give an opportunity in this regard to the concerned Central Excise authorities to make their submissions to meet the points made by production of this evidence. We observe that the Collector (Appeals) has not stated as to the frequency at which the samples were drawn and tested and whether these were drawn in respect of each batch of manufacture of vanaspati and whether these tests were in pursuance to the procedure prescribed in terms of the notification or otherwise. We observe that Section 35A of Central Excises and Salt Act does not envisage specifically that in case reliance is placed by Collector (Appeals) on any additional evidence earlier not before the lower authority, the said authority should be given an opportunity for making submission in respect of the additional evidence but it is a sound proposition of law that the additional evidence should be tested for its veracity and correctness by giving the other party a chance to meet the challenge of the additional evidence. Inasmuch as the full facts in this regard are not on record and also the fact that the competent departmental authority was given no opportunity to make submissions before the Collector (Appeals) in regard to this, we hold that the impugned appellate order is not a proper order and set aside the same and remand the case to the Jurisdictional Collector (Appeals) for de novo consideration and decision after giving the lower authorities opportunity to make submissions in regard to the test results which are one of the factors considered by the Collector (Appeals) while

setting aside the order of the Assistant Collector. The appeal is, therefore, allowed by remand.

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