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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-27-1987

Reported in : (1989)(43)ELT99TriDel

Appellant : Sajith Tapioca and Allied

Respondent : Collector of Customs

Judgement :

1. Notice under Section 28(1) of the Customs Act 1962 was issued to M/s. Sajith Tapioca & Allied Products (of which Shri K.K. Joseph is the proprietor) on 23.9.1977 calling upon them to show cause why duty amounting to Rs. 25,000/- should not be recovered in respect of tapioca chips exported by them on 14.7.1977. The appellants replied denying liability and claiming that the exported dry tapioca chips did not conform to the Indian Standards specifications for live stock feeding and that the export was for purposes of use of the goods for industrial purposes only, as may be seen by the certificate of the consignee, and hence no duty was payable. Under order dated 5.5.1981 theAssistant Collector rejected the said contention and confirmed the demand. The appeal against the same was dismissed by the Appellate Collector of Customs Madras under his order dated 28.1.1982/10.2.1982. The Appellants preferred a revision petition to the Central Govt, against the same. The same, on transfer, is the present deemed appeal before us.

2. We have heard Shri G. Prakash, Advocate for the appellants and Shri Vineet Kumar for the Department.

3. The show cause notice of the Assistant Collector himself confirmed that the exported goods did not conform to the IS specification for tapioca meant for live stock " feeding. A copy of the Customs laboratory test result has also been enclosed in this regard. The appellants had claimed before the Assistant Collector that the consignee had indented the goods for use in industrial purposes and not for cattle feed or special, human consumption. No doubt this certificate appears to have been obtained subsequent to export, evidently in connection with the notice issued demanding duty. In the revision petition it is mentioned that the fact that the export was for purposes of use of the goods in industry would be apparent from the shipping documents also.

4. The question whether in such circumstances duty could be demanded on the ground that tapioca chips exported would be animal feed, has been considered by this Tribunal in respect of exports at or about the period under in issue in the case of Cougar International Pvt. Ltd. v.Collector of Customs (1984 Vol. 16 ELT 310). In that case also contentions similar to the contentions raised in this appeal were raised by both sides and considered. Summing up the case for the appellants, the Tribunal observed in paragraph 15 as follows: (a) Item 21 of the Export Tariff Schedule covers "Animal feed", and in order to be dutiable under that item it has to be considered whether the particular goods conformed to the specifications or requirements generally recognized for tapioca for use as animal feed; (b) The Custom House test reports clearly showed that the goods did not conform to the Indian Standard specifications for tapioca for use as animal feed; (c) The fact that there are alternative uses for tapioca chips has been established by reference to authorities; (d) It has been submitted that there are no Indian Standard Specifications for tapioca to be used for industrial purposes, and accordingly there is nothing to show that the tapioca chips were not suitable for use for industrial purposes; and (e) There is evidence that these particular goods were intended for use for industrial purposes. While the use to which a particular consignment of goods is put would not be decisive in regard to its classification, it is certainly relevant as an indication of its suitability for one or another purpose. Taken with the other circumstances of the case, this would also indicate that the tapioca chips under consideration could more appropriately be considered as for industrial use than as animal feed." 5. From the facts stated earlier it would appear that the

position would be similar as above in the present case also. Taking note of the above position the Tribunal had held that no duty could be demanded on the export of tapioca in June, 1977 in that case. The export in the present appeal; was on 14.7.1977. It would therefore appear to us that, following the ratio of the said decision, no duty could be demanded on the export in issue in this appeal.

6. The Assistant Collector as well as the Appellate Collector have referred to specific exemption in respect of tapioca chips as in the Notification 167/Cus/78, dated 18.5.78. But if the particular tapioca chips exported by the appellants were not liable to be treated as animal feed at all, the fact that tapioca chips were specifically exempted only from 18.5.78 would not make any difference so far as the appellants are concerned since their export would not have attracted duty even in the absence of the notification. We have already seen that following the ratio of the case stated supra the goods exported by the appellants were not liable to duty.

7. In the order in appeal reference is made to the decision of the Govt, of India in the case of export of tapioca by M/s. Bakul Cashew Co. whereunder the Govt, of India had held that tapioca chips are covered by the description "animal feed" under Item 21 of the second schedule of the Customs Tariff Act and would therefore be liable for duty on export. But we may see that this decision of the Govt, of India has been set aside by the Madras High Court as reported in 1984 (15) ELT 379. Therefore no conclusion against the appellants can be drawn on the basis of the said decision of the Govt, of India.

8. In view of what has been stated above we hold that the demand for payment of duty on the tapioca chips exported by the appellants was not justified. The appeal is accordingly allowed and the orders of the lower authorities are set aside, with consequential relief.