Commissioner of Central Excise Vs. Bharat Starch Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-03-2005

Reported in : (2005)(183)ELT375TriDel

Judge : A T V.K., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Bharat Starch Industries

Judgement :

1. In this appeal, filed by the Revenue, the issue involved is whether Corn Gluten Meal is classifiable under Heading 23.01 of the Schedule to the Central Excise Tariff as confirmed by the Commissioner (Appeals) in the impugned order or under heading 35.04 of the Tariff as claimed by the Revenue.

2. We heard Shri A.S. Bedi, Learned S.D.R, and Sh. J. Vellapally, Sr.

Advocate. We observe that both the Deputy Commissioner and the Commissioner (Appeals) have classified the impugned produce under heading 23.01 of the Tariff. The rival heading reads as under : "2301 Residue and waste from the food industries, including Bagassee, other waste of sugar manufacture and oil cakes" 35.04 peptones and their derivatives, other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed".

5. The Deputy Commissioner, under the Order-in-Original No. 1/02 dated 5.12.02 has given the manufacturing process as under : "Maize purchased from different sources are cleaned to remove foreign matter like cobs, dust, stones, etc. in a Vibrosifting machine.

The cleaned maize are taken into vats where it is allowed to contact with hot dilute Sulphur Water for around 55 hours, by which, the maize become soft and protein - starch bonding becomes loose. The stepped maize is passed through Coarse grinding machine. The crushed material is taken into a trapezoidal tank called degerminator which contains slurry having heavier specific gravity, then the germ is separated by floating method. It is thereafter washed and dried. All the solid material from the degerminator bottom is passed through fine grinder and all the constituents are further crushed to get separated from the other components like fibre, gluten and starch.

From fine grinder, material comes on DSM Screen where Fibres are separated from the Starch and gluten. From fine grinder an DSM Box, Material comes into Bran Extractor where the fibres are separate from the starch and gluten by washing with water.

Fibre from all points are taken into D-Vetter for final washing where the traces of starch an gluten are separated and the resultant fibre is collected and sold as cattle feed.

All the under flows from different points like DSM Box, Bran Extractor, D-Vetter are collected and sent to Refinery section to separate out the starch and gluten which remain in slurry form.

In the Refinery Section there are battery of centrifuges which initially separate water from starch and gluten and thereafter starch and gluten separate from each other due to difference in specific gravity.

The Gluten Slurry obtained from centrifuge of Refinery Section is filtered through plate and frame filter and wet gluten cake is obtained. Wet Gluten cake is passed through the drier where it is dried and powdered gluten comes out for packing and is sold out as cattle feed.

The starch slurry obtained from centrifuge of Refinery Section is treated with Potassium Permganate for half an hour, Neutralize the remained traces of the potassium permagnate with Sodium Meta Bi Sulphate till the Potassium permagnate presence test becomes negative with Sodium Hydroxide solution. Thereafter, the starch slurry is centrifuged to get the wet starch Cake which is then fed into starch drier to obtain dry starch powder." 6. The Deputy Commissioner has also referred to the HSN Explanatory Notes to Chapter 23 according to which residue of starch manufactured and similar residue from maize (corn) consists largely of fibrous and proten substances usually presented in the form of pellets of meal but occasionally in cake. They are used for animal fodder or as fertilizers and some of the these residue are used in the production of cultures for the manufacture of anti biotics. The respondents had contended before the Adjudicating Authority that the impugned product is used for cattle feed and poultry feed which has not been controverter by the Revenue before us. The Adjudicating Authority also, after referring certificates received from various major customers of the respondents, cam to the conclusion that in the trade parlance also the impugned product is known as gluten meal and is specifically put to use by the customers in the fodder, cattle feed and poultry feed. Finally, the Adjudicating Authority had also examined that peptones covered by heading 35.04 are obtained by hydrolysis or enzymation of proteins by action of pepsin, papain, pancreatin etc. No such process in involved in the manufacture of the impugned product. The Commissioner (Appeals) has also rejected the appeal filed by the Revenue observing that mere presence of protein in sufficient quantity in the gluten meal doe snot taken it out of the preview of Chapter 23. In the appeal before us, the main contention of the Revenue is that the product contains more than 60% protein and as such is a type of protein concentrate and it should be classified as protein in terms of HSN Explanatory Notes. We observe that this point has been considered by the lower authorities and is not favored with them. The Revenue has not brought any material to support that the impugned product is not residue or waste of food industries.

We, therefore, find no reason to interfere with the Order and reject the appeal filed by the Revenue.