

A.P. Solvex Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-23-2005

Reported in : (2005)(192)ELT292TriDel

Judge : A T V.K., P Bajaj

Appellant : A.P. Solvex Ltd.

Respondent : Cce

Judgement :

1. In this appeal which has been filed against the impugned order-in-original, the issue relates to the availability of the benefit of exemption Notification No. 115/75 to the appellants. The facts are not much in dispute. The appellants are engaged in the production of Rice Bran Oil by Solvent Extraction Process and during the down stream process of refining, also produces Fatty Acid, Gums, Waxes, Soap Stock, Acid Oil and Refined Rice Bran Oil. They have got category 'B' License issued by the Directorate of Vanaspati, Vegetable Oils & Fats, New Delhi under the Solvent Extracted Oil, Deoiled Meal and Edible Flour (Control) Order. They have a composite mill consisting of solvent extraction and refining unit.

2. The benefit of the above said notification has been denied to the appellants on the ground that during the period in dispute (7.1.2003 to 31.10.2003), they did not carry out 100% extraction of the rice bran oil for producing refined vegetable oil and that the other by-products detailed above were not covered by the notification.

3. We have heard both the sides and gone through the record. The perusal of Notification No. 115/75 reveals that all goods (other than rubberized coir mattresses, fixed vegetable oils of Heading No. 15.03 and vegetable fats and oils of Heading No. 15.04) falling under the Schedule to the Central Excise Tariff Act, 1985 and manufactured in factories covered by any of the industries, specified in the Schedule annexed to it, were exempt from the whole of the duty of Excise leviable thereon. In the Schedule appended to this notification, 'Oil Mill and Solvent Extraction Industry' had been shown as one of those factories, at S.No. 4. The status of the appellants factory as 'Oil Mill and Solvent Extraction Industry' had not been disputed. They are engaged in the production of raw rice bran oil from oil seeds, by Solvent Extraction Process and after carrying out the process of refining in respect thereof, they produced refined vegetable oil.

4. The plea of the Revenue is that some raw rice bran oil was purchased by the appellants during the period in dispute, from outside and not produced by them by extraction process, from the oil seeds, for producing the refined edible oil, and as such they are not entitled for the benefit of said notification which exempts refined edible oil manufactured by the Oil Mill and Solvent Extraction Industry, cannot be accepted for the simple reason that no such condition had been imposed under the notification that the entire extraction of the raw rice bran oil, shall be carried out in the factory by the manufacturer, for claiming exemption from payment of duty on refined edible oil. In this view we also find corroboration from the ratio of law laid down by the Bangalore Bench of Tribunal in the case of CCE v. Agrawal Industries Ltd." decided vide Final Order No. 168-170/05 dt. 2.2.2005 : 2005 (121) ECR 404 (T) where also the manufacturer of refined oil did not carry out 100% extraction of raw rice bran oil and benefit of this very notification No. 115/75 was denied to them by Revenue, but the Tribunal allowed the benefit by observing that notification did not require 100% extra of rice bran oil in the factory for claiming its benefit for payment of duty on refined oil. The Apex Court has also in the case of CCE, Hyderabad v. Sunder Steels Ltd. observed that "exemption notification cannot be interpreted by adding words to it. Where the notification did not prescribe condition that 100% production of the product covered under the notification, should be within the factory of the assessee, the benefit of that exemption notification cannot be denied". In that case the benefit of notification No. 30/97-CE was denied to the

assessee of a steel plant who was producing majority off the ingots from purchased sponge iron and only small percentage was produced from the sponge iron made in his factory on the ground that he was not producing 100% of the ingots from the sponge iron produced in his factory. The Apex Court did not accept that ground and observed as detailed above.

4. Therefore, the appellants could not be legally denied the benefit of exemption notification No. 115/75 detailed above, from payment of duty on the refined edible oil. They became liable to pay duty on this product only w.e.f. 8.5.2003, the date when this notification was amended vide Notification No. 39/03-CE dt. 8.5.2003 through which the exemption from the refined edible oil, was withdrawn.

5. Similarly, the exemption in respect of other products in dispute coming into existence during the down stream process of refining of raw rice bran oil, such as fatty acid, gums, waxes, soap stock, acid oil etc. as detailed in the impugned order could not be denied to the appellants for the entire period in dispute, as the notification No.115/75 is applicable to all the goods manufactured in the factory of the appellants and exemption in respect of these goods, had not been even withdrawn by the amending notification No. 39/03 dt. 8.5.2003.

Therefore, duty demand in respect of these goods cannot be sustained.

6. In view of discussions made above, the impugned order of the adjudicating authority confirming duty demand and imposing penalty on the appellants, as detailed therein, is set aside and the appeal of the appellants is allowed with consequential relief as per law.

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