Commissioner of Central Excise Vs. Rajaram Solvex Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-10-2006

Judge : A T K.K.

Appellant : Commissioner of Central Excise

Respondent : Rajaram Solvex Ltd.

Judgement :

1. The brief facts of the case are that the appellants are engaged in the manufacture of refined edible oil falling under Chapter Heading 1503 of the Central Excise Tariff Act, 1985 and availing CENVAT credit on inputs and capital goods. During the course of manufacture of refined edible oil certain bye product like soap stock, acid oil arise which are exempted from payment of duty as per Notification No. 115/75 dated 30.04.1975. They were issued a Show Cause Notice stating that since the soap stock/acid oil were exempted from duty they were required to pay an amount equal to 8% of the value of exempted products under Rule 12 of the CENVAT Credit Rules, 2002 alongwith interest etc.

The demand was confirmed by lower authorities who also imposed a penalty of Rs. 20,000/- and also required them to pay interest. This order was set aside by Commissioner (appeals) on the grounds that soap stock/acid oil were only bye product and therefore Rule 6 of the CENVAT Credit Rule, 2002 was not applicable and placed his reliance on the Tribunal's decision in the case of Hi-Tech Carbon v. Commissioner of Central Excise, Allahabad 2. It was submitted that the soap stock/acid oil are final product and not bye product and CEGAT decision in the case of Hi-Tech Carbon was in applicable as that related to lean gas/off gases whereas the product in the present case was soap stock and edible oil. In view of this the respondents should have paid an amount equal to 8% of the value of soap stock as held by the Tribunal in the case reported at and 2002 (147) E.L.T. 293 (Tri.-Del.).

3. The respondents on the other hand submitted that the soap stock and edible oil are very much bye product as they arise during the manufacture of the final product i.e. refined edible oil. There is no other process by which the refined oil can be manufactured and under which emergence of bye product as soap stock can be avoided. Reliance in this regard was placed on the CESTAT decision in the case of Commissioner of Central Excise, Meerut-I v. Star Paper Mills Ltd. wherein it was held that sludge, waste arising during the manufacture of paper is waste or bye product and not a final product as the assessee is not aiming at manufacturing the sludge. A similar view was expressed in respect of press mud and bio-compost arising during the process of manufacture of sugar as held by Tribunal in the case of E.I.D. Parry (India) Ltd. v. Commissioner of Central Excise, Trichy 2004 (176) E.L.T. 734 (Tri.-Chennai). In regard to CESTAT decision in the case of Kesar Enterprises Ltd. v. Commissioner of Central Excise, Lucknow 2002 (147) E.L.T. 293 (Tri.-Del.) (cited by learned S.D.R.) it was submitted that the issue in that case was that rectified spirit was manufactured out of molasses which in turn was used for manufacture of country liquor which was not excisable & therefore a view was taken that since rectified spirit is excisable and exempted from duty, the assessee was required to pay duty at the rate of 8% on value of rectified spirit. Therefore, in that case both the intermediate and final products were exempted from duty and therefore the assessee was required to pay duty under Rule 57CC. However, in the present case, the finished product is refined edible oil which is chargeable to duty. It was accordingly submitted that Commissioner (Appeals)'s order is correct and should be upheld.4. Considering the submissions made by both sides, I find that the CESTAT decisions submitted by the learned S.D.R. is not relevant as in that case both the intermediate product as well as the finished products were exempted from duty. However in the present case the finished product i.e. refined edible oil is dutiable and the respondents are essentially engaged in the manufacture of refined oil and not of soap stock which is a bye product and

therefore they cannot be made liable to pay duty at the rate of 8% under Rule 57CC. The respondents case is fully covered by the CESTAT decision in the case of E.I.D. Parry (India) Ltd. and Commissioner v. Star Paper Mills Ltd. (cited supra).

5. In view of above, appeal having no merits is dismissed and I uphold the order of Commissioner (Appeals).