

Collr. of Customs and C.E. Vs. Surendra Cotton Oil Mills and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-08-1988

Reported in : (1988)(19)LC17Tri(Delhi)

Appellant : Collr. of Customs and C.E.

Respondent : Surendra Cotton Oil Mills and

Judgement :

1. This batch of appeals were heard together since the main point involved is the same.
2. These respondents had exported certain products. They were initially allowed to be exported without payment of duty. Subsequently the authorities felt that duty was payable. Accordingly demands were issued. Duty was demanded on the ground that what was exported was animal feed and hence duty was payable under Heading 21-CTA and no exemption was available. The respondents resisted the demands. The demands were subsequently confirmed under several orders. On appeals being filed, the said appeals were allowed by the concerned Collector (Appeals) under several orders. He held that, except in respect of certain products with reference to which a remand was felt justified, the other products were not animal feed and were, therefore, not subject to duty. It is against these orders that the present appeals have been preferred by the Department. We may note at this stage that no appeals or cross-objections, have been preferred by the concerned respondents in respect of the order of remand by the Collector (Appeals). Therefore, in respect of products covered by the order of remand they

will not be the subject matter of these appeals.

3. We have heard Smt. Zutshi for the Department in all these appeals.

For the assesseees the main arguments were submitted by Shri C.S. Lodha, Advocate. These were in the main adopted by the other respondents except by being supplemented in a small measure with reference to their respective appeals.

4. The products for consideration in these batch of appeals are de-oiled rice bran extraction, sesame seed extraction, niger seed extraction, rape-seed extraction and tapioca chips. It is in respect of mango kernels and salseed and babul seed extraction that the remand has been ordered by the Collector.

5. We shall consider the case relating to tapioca chips separately a little later. The other items in issue, except de-oiled rice bran extraction, are all residues of oil-seeds after the oil had been extracted therefrom. Except in appeal No. 1092 of 1986 (where the extraction was by the expeller process), the extraction in the other cases was by the solvent extraction method. This is mentioned for the reason that the method adopted for the extraction of the oil would also have a bearing on the question whether the residual product would be animal feed. So far as rice-bran is concerned this had also been used for extraction of rice bran oil by the solvent extraction method and the exported product was the de-oiled rice bran.

6. Even at the commencement, when referring to the judgment of this Tribunal in the Sub-clause Aries Agrovat (1984 Vol. 16 ELT 467), Smt.

Zutshi distinguished the said judgment by commenting that the said decision dealt with the question whether the product therein, used as an animal feed supplement, would be an animal feed whereas in the present appeals what we are concerned with is whether these products, which are part of animal feed, would also deserve the description animal feed for purpose of levy of duty. That is to say, she conceded that the products in issue may not be, by themselves, complete animal feed, but that would not be a reason not to call them animal feed and they could properly be called so for purposes of charging duty. We take note of the fact that the decision in the Aries Agrovat case did deal with products in the nature of

animal feed supplements, which were in the nature of additives to the normal feeds, to provide the needed supply of vitamins, etc. But we are not convinced that merely for the reason that the products before us are not in the nature of mere supplements the ratio of the decision, or the observations of the decision, would not apply to the facts in these appeals. We will revert to this a little later.

7. Smt. Zutshi further submitted that it may be true that the description of the exported goods in the invoices and shipping documents may not have been to describe them as animal feed but to describe them as de-oiled rice bran, sesame seed extraction, etc. but that would not be a proper circumstance to come to a decision whether they were animal feed. In considering this submission we have to take note of the fact that the term animal feed is not defined in the tariff. That would mean we will have to construe the term with reference to the dictionary meanings, meanings as given in text books and other publications, decisions of courts where the term came up for construction, market understanding or common parlance understanding of that term, etc. It would appear to us that the description in the trade documents would, in view of the above, deserve some attention and could not be ignored. We will consider the weight to be attached to such descriptions a little later.

7A. We shall first take into consideration the meaning attached to the term as reflected in the publications of Indian Standard Institution.

It is well-settled that such publications furnish useful guide in understanding how a particular term is understood by the persons associated with the trade in the commodity concerned. In IS 9703-1980 (glossary of terms for animal feeds and feeding stuffs) it is found stated at para 0.2 as follows: "In the field of animal feeds manufacturing industry a large number of feeding stuffs (ingredients) are utilised, which may be by-products of other industries and also subjected to certain processing before utilisation." We have to first note that a distinction is made between animal feeds and feeding stuffs. In para 0.2 feeding stuffs are identified with ingredients. This would suggest that what would be an ingredient, and, therefore, a feeding stuff, would not be normal feed proper. It may be fed to the animal but would not be known as animal feed but only as animal feeding stuff

(ingredient). As earlier mentioned, it is the case for the Department itself that the products in issue are but part of animal feeds and thus an ingredient of animal feed. This is in fact confirmed on a reference to certain other publications by way of standard specifications. For instance IS 3140/1966 (specification for solvent extracted linseed oilcake) and IS 3441/1966 (specification for solvent extracted groundnut oilcake) refer in para 0.2 of each to such oilcakes being used as a protein supplement in livestock rations. No doubt these two oilcakes are not the subject matter of these appeals.

But this would only illustrate that such oilcakes, as well as others, are used as supplements to provide what may be lacking in the feed that would be normally available to the animal. IS 5862/1970 (specification for solvent extracted niger seed oilcake) mentions in para 0.4 that the same provides a rich source of protein and may be extensively used as a protein supplement in livestock rations. Smt. Zutshi no doubt referred to para 0.2 where it is stated "however, based on the experience gained in countries abroad where extracted oilcakes (meals) are known to be fed to livestock since very long without any ill effects, the Ministry of Food and Agriculture, Government of India gave a clearance for the use of solvent extracted oilcakes (meals) for feeding the livestock".

She commented that this would generally support the contention for the Department that such solvent extracted oilcakes are animal feed. But in assessing this contention we should take note of the observation at 0.4 extracted above which would establish that such oilcakes would be but part of the regular feed (by way of a protein supplement) and not whole of animal feed. We may find similar observations in IS-6242-1971 (specification for solvent extracted safflower oilcakes). IS 3593-1968 (specification for solvent extracted rice bran) also states in para 0.4 that solvent extracted rice bran is finding an extensive use as an ingredient in compounded feeds. On a perusal of these Indian Standard Publications it becomes clear that the solvent extracted oilcakes as also de-oiled rice bran would be part of compounded animal feeds and an ingredient thereof, rather than the animal feed proper.

8. The question, therefore, is whether such oilcakes which are part of a compounded animal feed could be called animal feed in order to attract levy of duty. It is in this connection that the observations in *Aries Agvvat Industries (supra)* would be relevant. After discussing the part played by the various components that constitute a balanced animal feed the Tribunal observed "by animal feed we understood a feed that not merely supplies all that the animal body needs for its sustenance and nourishment for health or for production such as fats, carbohydrates, proteins, vitamins, minerals but include in the term the bulk, the fibre, the roughages, etc. that form the total feed which an animal must feed upon if it is to be satisfied." This observation would be relevant in the present appeals also, since, as mentioned *supra* the products (de-oiled seeds and bran) would be fed to the animals as a protein supplement and they do not supply the animal with the other essential ingredients that would also be needed to constitute an animal feed. If so, it would appear that what are but parts of animal feeds would not for that reason become entitled to be known or called animal feed.

9. Smt. Zutshi has referred us to various text books etc. as supporting her contention. She referred to the publication "Dairy India, 1987 3rd Annual Edition". The extract given to us did not contain information as to by whom the same was published. Smt. Zutshi stated that the same has been published by the Department of Animal Husbandry and that she obtained a copy from the Directorate of Animal Husbandry, Hyderabad, Andhra Pradesh. We find it stated at page 165 of the book, under the heading "concentrates" as follows :- "Concentrates: Fodder quality, invariably, is poor in our country.

So, high-producing cows and buffaloes cannot produce milk to their inherent capacity unless they are fed concentrates in addition to forages. This is most commonly and economically accomplished by the addition of cereal grains or highly nutritious by-products to the ration. The cereal grains (maize, sorghum, barley, etc) as a class are high in energy. Also, at least one of the cereal grains is grown in almost every farming section. Cereal grain by-products are used mainly in livestock feed. These by-products feeds include wheat bran, rice bran, rice polish, wheat middlings and maize gluten. In addition, another group of concentrate feeds available are oilcakes, such as those from cotton seed,

groundnut, linseed meal, mustard and guar. Concentrates contain less amount of crude fibre, and large amount of starches, fat or proteins. These feeds may contain upto twice as much productive energy per kg. as compared to forages." This also, therefore, again established that oilcakes, as we are concerned within these appeals, are fed in addition to the normal forages of animals and are thus but parts of the feed. Again in table 55 at page 172 these cakes and meals are shown under the heading "feeding stuffs", which, as earlier seen, are distinct from the feeds.

Another book she referred to was "Feeding and Milking of Cows" by Shri A. C. Aggarwala. We find that the book was published in 1931 and copies furnished are from that book. We refer to this since in the present case we are mostly concerned with cakes resulting after solvent extraction and in 1931 the cakes were mainly ghany pressed or expeller pressed. These cakes are normally fed to the animals as a protein supplement since after the extraction of the oil the protein content becomes high compared to the other contents because the oil has been extracted. Extraction of oil being of a larger measure in solvent extraction than in expeller extraction the proportion of protein may not be the same in the different varieties of cakes. We are quite sure whether that would also not make for some difference. In any event, it appears to us that the extracts in this book do not advance the case for the Department. At page 58 we find it stated that in India it is a common custom to feed the cow with the concentrates first and with roughages just prior and during the process of milking. In page 77 under Part II the products we are concerned with are clubbed under the heading "by-products of Industries". Page 102 deals with oil-seeds. It is mentioned that oilseeds and cakes prepared from them are rich in fats, proteins, and mineral matter and are, therefore, much prized for feeding calves and milching cows. Again at pages 104 and 105 under the heading "By-products of Industries" oilcakes are dealt with specially.

But here again they are dealt with as only parts of the feed.

10. Smt. Zutshi then referred to the Book "Basic Animal Nutrition and Feeding" (Second Edition) by Church and Pond. She pointed out that in appendix table 2 "composition of feed stuffs commonly fed to poultry and swins" several types of

oilcake meal are mentioned under the heading plant protein sources. She pointed out that the description given at the top of the tabular column was "composition, as fed". She relied on the description "as fed". But it should be noted that it is the admitted case that these oilcakes or meals could be fed to the animals, the question only being whether they were for that reason known as animal feed. As pointed out in the Aries Agrovat decision what all is fed to animals would not for that reason become animal feed.

11. She then referred to the book "An Introduction to Feeding Farm Livestock" being a volume in a Pargamon International Library series.

We find that in Chapter 9 of this book (feeds commonly used in livestock feeding) it is stated that feeds can be conveniently classified as follows: (i) Coarse fodders (roughages) : bulky feeds with a high crude fibre content and low moisture content; (iii) Green fodders: bulky feeds fairly high in moisture content and fibre content; (iv) Concentrate feeds: low moisture content and a high feeding value. This would again suggest that the goods we are now concerned with, being in the nature of concentrate feeds (by reason of the high protein contents), would be but a small part of the animal feed, the major part consisting of the bulky feeds mentioned at items 1,2 and 3 above. We may again find at page 61 of the book under the heading "Cakes and Meals" it is stated that the removal of the extra oil from the seed (under the solvent process) reduces the energy feeding value of the extracted products but that the protein value is proportionately higher. This would again suggest that these concentrates have a special part but that the main source of supply of energy for the animal is from the other types of feed, the cakes and meals being but a small part of the feed in order to supply protein. Smt. Zutshi referred to table 2 at page 68 and pointed out that the same dealt with Feed Analysis Table : Concentrate Feeds.

She pointed out that various types of meals are dealt with under the table and that would show that they are feeds. But it should be noted that they are described not merely as feeds but as concentrate feeds i.e. part of the regular feeds.

12. She also filed before us copy of pages 170 and 171 of another book and mentioned that the same was from the book Animal Nutrition. (May be it is the

book Animal Nutrition by Leonard A. Maynard and J. K. Loosli to which book we find a reference at page 911 of the Encyclopaedia Britannica at the end of the Bibliography in that page). Here she referred to table 8.1 under the heading Calcium and Phosphorus content of some common feeds and pointed out that solvent extracted cotton seed meal is mentioned therein. But here we may note that at the commencement of the Section 8.14 it is mentioned "the different concentrates and roughages vary widely in their content of calcium and phosphorus". It is thereafter that table 8.1 has been formulated mentioning the different articles that could be fed to an animal and giving the calcium and phosphorus content thereof. We may note that animal-carcass residue, is also one of the items. It could hardly be said that it would be a full animal feed. Therefore, the mere fact that cotton seed meal is mentioned in that table would not for that reason make it into a regular animal feed. The next book she referred to was Animal Nutrition in Tropics said to be by Raghbir, the name of the publisher not being mentioned. We may note that in this book also in page 160 feeding stuffs are divided into roughages, concentrates and additives and that oilcakes and bran are mentioned as a sub-heading under concentrate. Under the heading concentrates at page 160 it is mentioned "for the proper feeding of livestock a certain portion of the ration includes cereals and their by-products, oilcakes and mineral supplements". Therefore, the oilcakes appear to be of the same nature as mineral supplement and therefore, following the decision in Aries Agrovat it would have to be held that these oilcakes would also not be entitled to be called animal feed. At page 170 onwards various types of cakes are dealt with and it may be found on a perusal thereof that these cakes are mentioned to be an important source of protein for the animals but that they would be in the nature of supplement feed and not the main feed itself.

13. She also referred to The Wealth of India (1953 Edition)". We find it stated in this book in the section dealing with Dairy Industries as follows: "Feeding Stuffs : Feeding stuffs for dairy cattle may be broadly classified into roughages and concentrates. The roughages consist of succulent feeds (natural grazing, cultivated grasses, cultivated fodders, and root crops) and dry fodders (hay, straw and chaff). The concentrate consist of carbohydrate-rich materials (legume grains and cereal grains) and protein-rich materials (oilseeds, oilseed cakes and meals).

In addition to roughages and concentrates, dairy animals also require a certain amount of common salt to keep them in good condition." 14. Smt. Zutshi then referred to the New Encyclopaedia Britannica, Macro-paedia Volume 1 (15th Edition). Under the heading animal feeds commencing at page 908 it is found mentioned at page 910 as follows: Animal Feeds are classified as follows : (1) concentrates, high in energy value, including (a) cereal grains and their by-products (barley, corn, oats, rye, wheat), (b) high-protein oil meals or cakes (soyabean cottonseed, peanut), (c) by-products from processing of sugar beats, sugarcane, and (d) animal and fish by-products; (2) roughages, including (a) pasture grasses, (b) hays, (c) silage, (d) root crops, and (e) straw, stoyer (stalks). The composition of a few of the most commonly used feeds is shown in Tables 1 and 2.

15. She pointed out that in table 1 in this page the several types of oilcake meals are described under the heading concentrates commonly used as animal feed. We also find this passage in this book: "High-protein meals : Vegetable seeds produced primarily as a source of oil for human food and industrial uses include soyabeans, peanuts (groundnuts), flaxseed, cottonseed, coconuts, oil palm, and sunflower seeds. After these seeds are processed to remove the oil, the residues, which may contain from 5 per cent to less than 1 per cent of fat and 20 to 50 per cent of protein, are marketed as animal feeds." It is no doubt stated at the end of this passage that these oilcakes (obtained after removal of the oil from the seeds) are marketed as animal feeds. We have to consider whether this passage would indicate the market understanding of the term animal feed. In the light of the discussion earlier we are not inclined to accept this passage as sufficient evidence of the market understanding of the term.

16. Then she referred to decisions of courts as supporting the case for the Department. She first referred to the decision in the case Commissioner of Sales Tax, U.P. v. Narain Das Barey Lal (1978 Vol. 42 STC 470). But we find that this case dealt with rice bran and not de-oiled rice bran. This case is, therefore, of no assistance in the dispute before us. She then referred to the decision in Omrao Industrial Corporation P. Ltd. v. Sales Tax Officer (1974 Vol. 33 ELT 343). The question in that case was whether de-oiled rice bran was cattle fodder. The

question related to the entry in the relevant notification under the Sales Tax Act which read "cattle fodder including green fodder ..." The Allahabad High Court held that deoiled rice bran was covered by the expression cattle fodder. They came to the conclusion on the ground that there was no material difference between cattle fodder and cattle feed and that anything which is used as cattle feed could be as well called cattle fodder. Therefore, they hold that since deoiled rice bran was being fed to the cattle it will be cattle fodder. In this connection we may note the following passage at page 344: "In the Survey of India's Export Potential of Oilcakes, it has been stated at page 2 that deoiled rice bran is mainly used as an ingredient for mixed feed for poultry and pigs in more advanced countries like the UK, Japan and the USA in addition to being used as cattle feed. At page 29 it is stated that the utility of deoiled rice bran as an animal feed is not yet known to many compound feed manufacturers.

The statement in an official report coupled with the allegation in paragraph 15 of the writ petition that deoiled rice bran is used as a cattle feed and coupled with the significant fact that this assertion in the writ petition has not as such been denied in the counter-affidavit leads us to believe the case of the petitioner that deoiled rice bran is used, inter alia, as cattle feed." Therefore, the High Court came to its conclusion on the basis of the allegation that de-oiled rice bran was being used to feed cattle and the failure on the part of the authorities to deny this allegation in the writ petition. As earlier mentioned there is no dispute that de-oiled rice bran could be used to feed animals. But as earlier seen this would not by itself suffice to establish that it would for that reason be called animal feed proper.

17. Another decision relied on by her was Express Dairy Company Ltd. v. The Assessing Authority (1971 Vol. 28 STC 37). That case dealt with "Gaur giri" or "gaur meal". The question was whether they fell under item 54 of Schedule B to Punjab Sales Tax Act, the item reading "fodder of every type (dry or green)". Since the products in issue were proved to be fed to animals the Court held that they fell within that entry being fodder. This case also could not, therefore, support her contention. The next case she relied on is Bhagwan Oil and Potato Chips Factory v. State of UP (1975 Vol. 35 STC 514). Here again the entry for construction was in the UP Sales Tax Act reading "cattle fodder including green fodder... and

oilcake". The issue in the case related to oilcakes. The issue was whether oilcakes which are used for further extraction of oil and are not used as cattle fodder were exempt from sales tax. The Revenue contended that oilcake would be exempt only if it is used as cattle fodder and not otherwise. It was this contention that was rejected and held that oilcake would be exempt irrespective of the nature of the use to which it was put. This decision is, therefore, of no assistance in our case.

18. The last decision Smt. Zutshi referred to in this connection was PCC Oil Mills v. State of Punjab (1972 Taxation Law Reporter Law Report No. 2222). The issue in that case related to the liability for tax in respect of purchase of oilseeds. She referred to the decision only with reference to the observation therein regarding use of oilcakes for feeding animals. We find stated at page 2224 "oilcakes are used as a part of fodder and are given to milch animals alongwith the fodder in order to get a better yield of milk from them. They are, therefore, used as fodder and nothing else". This observation would in fact support the case of the respondents that oilcakes of the nature we are concerned within the present appeals are but a supplement to the regular animal feed in order to supply a particular requirement of the feed, and such supplement would not, therefore, be fit to be called animal feed proper.

19. The above discussion would establish that the products for consideration in these appeals would but be by way of supplements to the regular feed of the animals in order to provide certain elements of the feed which would be required for the efficient growth and yield of the animals. They may not be in the nature of additives such as vitamins, etc., but we are satisfied that they would be in the nature of supplements. For the said reason we are satisfied that they would not deserve to be called animal feed but only supplemental parts of the feed.

20. In paragraph 5 of the order we have mentioned that we would revert later to the question whether the oilcakes or the deoiled rice bran in issue before us could be considered as animal feed, taking into consideration the nature of the method adopted for the extraction of the oil. Except in one instance the method adopted for extraction of the oil in all the other cases was the solvent extraction method. This solvent extraction is done by use of chemicals. As pointed out in IS-5862-

1970 solvent extracted oilcakes (meals) were not till recently permitted to be fed to the livestock as it was generally felt that the residual solvent remaining in the extracted oilcakes will be toxic to the cattle on account of the solvents used for purposes of extraction.

That is why when subsequently such solvent extracted oilcakes were permitted to be used for the feeding of the animals specifications had to be specially provided by the Indian Standard Institution so that the deleterious effect of the residual solvent could be avoided. It is the contention of the respondents that their solvent extracted cakes have not been treated for the removal of the toxic hexane used for the solvent extraction and, therefore, the cakes exported by them could not be used as animal feed as they would be deleterious to the health of the animals, apart from being highly foul smelling to put off the animals. It would be for the Revenue to show that a particular product is dutiable. Hence it would be for the Revenue to show that the cakes (meals) had been treated to remove the solvent so as to make the cakes fit for consumption by animals. There is nothing on record to show that such steps had been taken. For that reason also it may have to be held that on the facts and in the circumstances of these appeals, the oilcakes exported by these respondents have not been proved to be animal feed.

21. The respondents relied upon various certificates etc. produced at the time of hearing of the appeals before the Collector in order to establish the trade understanding of such oilcakes. They pointed out that in spite of such evidence there is no evidence on the part of the Department to controvert the same. In connection with this argument the Bench enquired whether these pieces of additional evidence were made available to the Department in the proceedings before the Collector (Appeals). This query was with reference to the provision in the Customs Act and the Rules thereunder governing the procedure before the Collector (Appeals) after the amendment of the Act in 1982. Though Smt.

Zutshi had, at the time of query was raised, no ready reply, she stated at the time of the conclusion of the hearing that from the records available with her she found that the additional evidence had not been made available by the Collector (Appeals) to the lower authorities. So far as the respondents are concerned their

Counsel stated that they have no specific information about the same. But they further pointed out that even in the present appeals before us no objection had been taken on this score and even now no evidence has been produced. The situation that finally emerges is that the respondents have produced evidence by way of certificates from traders dealing with the goods to show that the oilcakes in issue are not known or traded as animal feed and that there is no evidence contra on the side of the Department.

22. At the end of paragraph 6 we have mentioned that we will, at the appropriate stage, consider the applicability of the ratio in the Aries Agroviet decision with reference to the oilcakes in issue before us. We have now seen that the oilcakes would be at best in the nature of supplements. If so, it appears to us that the observations in the decision *supra* (made in connection with additives) would equally apply in the case of these supplements.

23. We, therefore, hold, on a careful consideration of the submissions of both sides that the oilcakes (meals) in issue would not be animal feed in order to attract levy of duty under heading 21CTA.24. So far as tapioca chips are concerned these were the subject matter of the decision of the Madras High Court in the case *Bakul Cashew Company* (1984 Vol. 15 ELT 379) as also a decision of this Tribunal in the case *oiM/s. Cougar International Private Ltd.* 1984(16)E.L.T.310(Tri.). These decisions have held that tapioca chips would not be animal feeds and would not be liable to duty under heading 21-CTA. We see no reason to differ from the said decisions.

25. We are, therefore, satisfied that the Collector (Appeals) was correct in holding that the products in issue before us in these appeals were not animal feed to attract duty under heading 21-CTA. In the circumstances we feel that it is unnecessary to go into the other pleas (technical in nature) raised on behalf of the respondents. These were to contend: (i) the demands must fail as there was no preceding show cause notice; (ii) the fact that a hearing had been later given would not cure the defect; (iii) the show cause notice was further defective, in that no details were given; (iv) the orders of the Assistant Collectors were bad for the very reason that they ran contrary to an earlier decision of the Appellate Collector

of Bombay within whose jurisdiction the Assistant Collectors concerned in these cases were functioning.

(v) a subsequent notification cannot be relied upon to draw a presumption of dutiability in the preceding period. We are not going into these contentions.

26. As earlier mentioned, there are no appeals, or even cross-objections, with reference to that part of the order of the Collector (Appeals) in which a remand had been ordered.

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