

Prakash Solvex and Prakash Soya Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-29-2008

Judge : S Jha, S T a.K.

Appellant : Prakash Solvex and Prakash Soya

Respondent : Cce

Judgement :

1. These two appeals on behalf of M/s Prakash Solvex and M/s Prakash Soya were taken up together and are disposed of by this common order.

In Appeal No. E/822/2005 (M/s Prakash Solvex), the appellant has been asked to pay duty of Rs. 11,19,682/- and penalty of Rs. 20,000/-. In Appeal No. E/828/2008 (M/s Prakash Soya Ltd.), the demand is for Rs. 9,00,968/- as excise duty.

2. It may be stated, at the outset, that in the case of M/s Prakash Solvex, the appellant does not dispute the demand to the extent of Rs. 42,427/- as duty leviable on shortage of oil and Rs. 1,02,975/- on clearance of refined edible oil without payment of duty, and likewise in the case of M/s Prakash Soya Ltd. the demand of Rs. 1,02,975/- on clearances of refined edible oil is not in dispute. As a matter of fact, learned Counsel for the appellants stated that the said amounts have already been paid by the appellants.

3. The case of the appellants is that, they are entitled to exemption under Notification No. 115/75-CE dated 30.04.1975, as amended from time to time, and

the levy of duty is, therefore, unjustified. It is also submitted that the appellant, M/s Prakash Solvex, had paid duty no sooner than it was demanded on the shortage found. The imposition of penalty was, therefore, not warranted.

4. On the main issue as to whether the duty is leviable on fatty acid and residues which are by-products of oil, the appellants place reliance on a decision of this Tribunal in the case of A.P. Solvex Ltd. v. CCE, Ludhiana 2005 (192) ELT 292 (T-Del.). it is relevant to mention here that the dispute in these appeals arises from the fact that the appellants besides being engaged in the activity of extraction of oil from oil seeds, also purchased crude oil and refined the crude oil obtained from the open market. The dispute arose as to whether the manufacture of oil as a result of refining of the crude oil comes within the ambit of the said Notification dated 30.04.1975. The plea of the Revenue is that crude oil was purchased from outside and there being no production of oil by extraction process from the oil seeds etc., the manufacturers were not entitled to the benefit of the said notification which exempts refined edible oil manufactured by the oil mill and solvent extraction industry. The plea of the Revenue was rejected in the case of A.P. Solvex Ltd. v. CCE, Ludhiana (supra) observing that no such condition had been imposed in the Notification that the entire extraction of raw rice bran oil (which was the subject input in that case), should be carried out in the factory by the manufacturer for claiming exemption from payment of duty on refined edible oil. The Tribunal in conclusion relied upon a decision of the Bangalore Bench in CCE v. Aggarwal Industries Ltd. , as well as a decision of the Apex Court in the case of CCE, Hyderabad v. Sunder Steels Ltd. . In the latter case, it was observed by the Apex Court that the exemption notification cannot be interpreted by adding words to it. As the Notification does not prescribe any condition that 100% production of the product covered under the Notification should be within the factory of the assessee, the benefit of exemption notification cannot be denied.

5. At this stage, it would be appropriate to quote the above said notification in extenso as under: In exercise of the powers conferred by Sub-rule (1) of Rule Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods (other than rubberized coir mattress, [refined edible oil falling under heading No. 15.02, 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 (5 of 1986), and manufactured in factories covered by any of the industries specified in the Schedule hereto annexed from the whole of the duty of excise leviable thereon.

5. It is clear on interpretation of the above notification in the case of A.P. Solvex Ltd. v. CCE, Ludhiana (supra), which not challenged by the Revenue, that fatty acid or residues, as the case may be, being by-products of the manufacturing process in the appellant's factory, cannot be subjected to levy of excise duty as they are covered by the exemption notification. Faced with the decision in A.P. Solvex Ltd. v. CCE, Ludhiana (supra), the learned DR submitted that the benefit envisaged in the exemption notification is available only in cases where the unit is engaged in the manufacture of oil by process of extraction. In the instant case, it was pointed out that 97% of the manufacturing activities carried out in the case of M/s Prakash Solvex and 99% in the case of M/s Prakash Soya, involve purchase of crude oil from open market and only negligible quantity involves extraction from fatty acid etc. The appellants not being solvent extraction units, cannot claim the benefit of exemption under the said notification.

6. We do not find any merit in the submission of the learned DR for the simple reason that what is exempted in the notification is the goods (other than especially mentioned therein) manufactured in factories covered by any of the industries specified in the schedule. It is to be kept in mind that the Notification refers to Oil mill and solvent extraction industry which suggests that any goods manufactured in a factory which may qualify as 'Oil Mill Solvent Extraction Industry', is entitled to exemption. In this view of the matter, the fact that the appellant purchased crude oil and by subjecting the same to refining process manufactured oil is immaterial. As observed in the case of A.P. Solvex Ltd. v. CCE, Ludhiana (supra), in the absence of any such condition or stipulation therein, the benefit of exemption will be available to all factories covered by oil mill or solvent extraction industry. The Revenue was, therefore, not justified in imposing duty on the fatty acids and residues which are by-products of the manufacturing process in the factory premises of the appellants.

7. The only question which remains to be considered is whether the imposition of penalty of Rs. 20,000/- in the case of M/s Prakash Solvex was justified. We find substance in the submission of the appellant's counsel that the entire amount of duty having been paid by the appellant, before the issuance of the show cause notice, penalty should not have been imposed. We accordingly set-aside the penalty portion of the order.

8. In the result, the impugned order of the Commissioner (Appeals) is modified to the extent, indicated above. The appeals are disposed of in the above terms.

(Dictated and pronounced in the open Court on the 29th day of January, 2008)

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