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Court : Gujarat

Decided On : Mar-06-1980

Reported in : 1981LC70D(Gujarat)

Judge : S.H. Sheth and; A.M. Ahmadi, JJ.

Appeal No. : Special Civil Application No. 862 of 1978

Appellant : Navsari Oil Products Limited

Respondent : The Superintendent of Central Excise and Customs and anr.

Disposition : Petition allowed

Judgement :

S.H. Sheth, J.

1. The petitioner is a company which manufactures at Navsari fatty acids which are consumed by textile industry. On 2nd February 1953, the petitioner obtained a licence under the Central Excises and Salt Act, 1944. That licence was renewed upto 31st December 1979. It was a licence under which the petitioner was authorized to obtain without payment of duty leviable thereon 'vegetable product' to be used by them in the manufacture of stearic acid. In 1968 the petitioner

obtained a licence under Central Excises and Salt Act, 1944, to manufacture super-hardened oil. Both these licences were renewed from year to year and had been in force when this petition was filed. .The super hardened oil which the petitioner has been manufacturing was not subject to excise duty. It is indeed a 'vegetable product'. Entry 13 in the First Schedule to the Central Excises and Salt Act, 1944, subjects 'vegetable product' to excise duly. However, there was an exemption notification issued by the Central Government under which vegetable product was exempted from payment of excise duty which was otherwise leviable thereon if the Collector of Central Excise was satisfied that the vegetable product was intended for use -

(a) in the manufacture of soaps including insoluble soaps ;

(b) in the manufacture of fatty acid ;

(c) in the manufacture of greases, lubricants and textiles sizing agents ; and

(d) as a protective agent in the manufacture of tin plants.

The exemption granted under this notification was available to the petitioner because the petitioner had been using the vegetable product in the manufacture of fatty acids. However, that notification was latet withdrawn and 'vegetable product' within the meaning of Entry 13 in the First Schedule in its entirety was rendered subject to payment of excise duty.

2. The Central excise authorities, therefore, demanded of the petitioner excise duly on super-hardened oil under Entry 13 in the First Schedule. The petitioner contended that duty on super-hardened oil was not leviable under Entry 13 in the First Schedule and that it would be leviable under the residuary Entry in the First Schedule Entry 68. It appears that the Central Excises authorities did not accept the contention raised by the petitioner.

3. The petitioner has, therefore, filed this petition. The question which arises for our consideration in this petition is whether super-hardened oil produced or manufactured by the petitioner is subject to the payment of excise duty either under Entry 13 or under Entry 68 in the First Schedule to the Central Excises and

Salt Act. 1944. Entry 13 in the First Schedule reads thus:

---Item Description of goods Rate of No. duty---1. 2. 3. ---13. Vegetable product-'Vegetable product' means any vegetable oil or fat which, whether by itself or Ten per in admixture with cent, ad any other substance, valorem. has by hydrogena-tion or by any other process been harde-ned for human consumption.---

The difinition of the expression 'vegetable product' given below Entry 13 in the First Schedule makes it clear beyond any doubt that it contemplates vegetable product which is fit for human consumption. It does not embrace within its sweep any other vegetable products. The petitioner has produced before us certificates from two Scientific laboratories to show that super-hardened oil-which it produces or manufactures is not fit for human consumption. The certificate issued by Central Food Technological Research Institute, Mysore, on 27th February 1976 shows that no fat with a melting point above 37C can be used for edible purposes. It further states that the melting point of the fat of super-hardened oil which the petitioner has been producing is abnormally high. The second certificate which he has produced is from State Public Health Laboratory, Baroda, dated 25th March 1976. It states that the super-hardened oils produced by the petitioner are not fit for human consumption. There are two types of super-hardened oils which the petitioner produces: one is groundnut oil and another is palm oil. The super-hardened groundnut oil produced by the petitioner, the certificate shows, has a melting point at 61.5C while the super-hardened palm oil which the petitioner has been producing has a melting point at 59C. These two certificates satisfactorily establish the contention raised on behalf of the petitioner that the super-hardened groundnut oil and the super-hardened palm oil which it has been producing are not fit for human consumption and cannot be used for edible purposes because their melting points are abnormally high. It is clear, therefore, that the super-hardened oils which the petitioner has been producing are not covered by Entry 13 in the First Schedule.

4. 'It may be stated that on behalf of the Central Excise authorities and the Union of India no affidavit-in-reply has been filed controverting the avercments made by the petitioner and the certificates produced by it. We may also stated that both these certificates are from Government , Laboratories. On behalf of the petitioner, Mr. Patel has also brought to our notices departmental clarification which states that vegetable products which are having a melting point .above 44 are not assessable under Tariff Item 13 as it is extra hardened and unfit for human consumption. We see no reason to discard this evidence. No other specific entry has been pointed out to us to show that duty will be leviable thereunder on super-hardened oils produced by the petitioner. Obviously, therefore, it is the residuary entry-Entry 68 which would be attracted in the instant case. Entry 68' subjects 'all other goods, not elsewhere specified, manufactured in a factory...' to excise duty. There are three exception to this Entry which have been specified below it. It is not the petitioner's case that super-hardened oil which it has been producing falls under any of the three exceptions to the residuary entry-Entry 68. Therefore, in our opinion, duty which is leviable on the super-hardened groundnut and palm oils which the petitioner has been producing are subject to payment of excise duty under Entry 68 in the First Schedule in the Central Excises and Salt Act, 1944.

5. It the result, the petitioner succeeds. 'It is declared that the super-hardened groundnut and palm oils which the petitioner has been producing are chargeable to excise duty under Entry 68 in the First Schedule to the Central Excises and Salt Act, 1944.' A writ of mandamus shall issue restraining the respondents from levying and collecting excise duty upon the super-hardened groundnut and palm oils produced by the petitioner except under Entry 68 in the First Schedule to the said Act. The respondents are further directed to refund to the petitioner all excess amounts paid by it to the respondents in respect of the two products referred to above. The excess shall be computed after taking into account what the. petitioner paid, since the withdrawal of exemption notification, to the respondents in respect of the aforesaid two products and what was payable by it to them under entry 68 in the First Schedule to the Central Excises and Salt Act, 1944. Such computation shall, be made and the excess amount shall be refunded to the petitioner within three months from to-day. Whatever Bank guarantee the petitioner has furnished in pursuance of the interim order made by this Court on 26th June 1978 is

cancelled. Rule is made absolute with costs.