

Collector of C. Excise Vs. Mehta Vegetable Products (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-29-1994

Reported in : (1994)LC41Tri(Delhi)

Appellant : Collector of C. Excise

Respondent : Mehta Vegetable Products (P) Ltd.

Advocate for Def. : Shri. J.S. Agarwal

Judgement :

1. This is an appeal by the Revenue challenging the impugned orders passed by the authorities below whereby they allowed the refund claim of the respondents for the duty amounting to Rs. 9331.48.

2. Brief facts leading to the present appeal are that the respondents M/s. Mehta Vegetable Products (P) Ltd. are engaged in the manufacture of vegetable products at Chittorgarth. They preferred their claim for refund of Central Excise Duty amounting to Rs. 9331.48 paid on Acid Oil (Tariff Item 68) by them on the ground that they erroneously paid the duty on Acid Oil cleared under Gate Pass No. 5 dated 15-2-1982 and 6 dated 6-3-1983 as Acid Oil was exempt from Central Excise Duty under Notification No. 115/75-C.E., dated 30-4-1975. It was allowed by the Assistant Collector. On appeal by the Revenue, the Collector (Appeals) also upheld the Order of the Assistant Collector. Still dissatisfied, the Revenue has filed the present appeal.

3. Appearing on behalf of the Revenue, Shri Somesh Arora, learned JDR, submitted that the issue is a covered one in favour of the Revenue by Final Order No. 338 & 339/93-C, dated 29-10-1993 passed in the case of Rajad-hiraj Industries v. Collector of Customs and Central Excise, Indore, [1994 (69) E.L.T. 148 (Tri.)] (Para 5) wherein it was held as under : 4. In reply, Shri J.S. Agarwal, learned counsel for the respondents, submitted that the respondent is a composite mill who manufacture and clear refined VNE Oil falling under Item 13 of the Central Excise Tariff and, therefore, the ratio of the said case of M/s. Rajadhiraj Industries, supra, would not apply to the present case. Continuing further, he submitted that in the other case of the present respondents in which the Collector of Central Excise, Jaipur, was also appellant it was held by this Tribunal that the respondents were entitled for the benefit of the said exemption Notification No. 115/75-C.E. (See Order No. 481 & 482/89-C, dated 18-9-1989).

5. We have considered the submissions. Admittedly, in their own case the respondents were granted benefit of the said Notification No.115/75-C.E., dated 30-4-1975 in respect of the Acid Oil. While passing the said Final Order No. 338 & 339/93-C, dated 29-10-1993 in the case of M/s. Rajadhiraj Industries, supra, while recording the findings in paragraph 5, as extracted above, this Tribunal distinguished the said case of the present respondents (Order No. 481 to 482/89-C, dated 18-9-1989) on facts on the ground that the respondents' mill was a composite mill in which crushing of oil seeds was also undertaken. For ready reference the relevant portion of the said Order may also be reproduced as under : "6. The learned counsel for the appellants has claimed that the matter had been settled in the appellants favour by the Tribunal's decision in the case of Order No. 481 to 482/89-C, dated 18-9-1989 in the case of M/s Mehta Vegetable Products (P) Ltd. We find the decision relied upon by the learned counsel is distinguishable on facts since the records relating to the case of M/s Mehta Vegetable Products (P) Ltd. reveal that they were a composite unit in which crushing of oil seeds was also undertaken".

6. Thus, following the ratio of the said Order No. 481 to 482/89-C, dated 18-9-1989, we uphold the impugned Orders passed by the authorities below and reject the appeal.

