Prabhat Solvent Extraction Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-07-1996

Reported in : (1996)(64)LC548Tri(Mum.)bai

Judge : S Peeran, K D Shiben

Appellant : Prabhat Solvent Extraction

Respondent : Collector of Central Excise

Judgement :

1. These appeals directed against the common order in Appeal were heard together and are being disposed of through this common order.

2. The issue relates to leviability or otherwise of cess on the vegetable oil produced from oil seeds, different oil cakes 3. Arguing for the appellants Ld. Counsel for the Appellants makes the following submissions: 3.1. Though the issue is covered against them by judgment of the Andhra Pradesh High Court in the case of Andhra Pradesh Rice Bran Solvent Extractors Association v. UOI, the tribunal in the case of Rartchi Solvent Oil Industries v. CCE, Calcutta , following the judgment of Bombay High Court in the case of Bhasir Oil Mills v. UOI also judgment of the Allahabad High Court in case of U.P. Solvent Extractors Association v. UOI held that oil extracted by solvent process from oil cakes etc. does not come within the definition of vegetable oil as defined in the National Oil Seeds and Vegetable Oil Development Board Act, 1983 and hence no cess is leviable. The Tribunal in this case also relied upon the Tribunal's earlier ruling in

case of Andhra Sugars v. CCE in their final order No. 284-287/93-C dt. 13.9.1993. The Ld. Counsel submits that the Bombay High Court in case of Bashir Oil Mills v. CCE relied upon the judgment of the Hon'ble Supreme Court in case of State of Punjab v. Chandulal Kishanlal and held that since the word in the definition clause relating to vegetable oil is "produced" and not "derived" which would mean that oil is produced from the oil bearing material by simple method of deriving it. This definition covers natural oil produced directly from the plants such as its limbs, flowers, seeds, barks etc. Since oil can be extracted from oil cakes only through processes of solvent extraction plant, the oil cake itself an independent commercial commodity different from the oil seeds which is independently liable to duty under the Excise Act, that oil cakes from which oil is extracted by the skilled technical process of the solvent extraction plant is a distinct commercial commodity, such oil cakes are not directly derived from the plant as such but they are by-products of the oil seeds after the oil is extracted from them. The origin of the oil cakes in the popular sense is thus the oil seeds. There must be direct and not remote nexus between the oil bearing material and the plant so that it can be said in such cases that their origin is plant. Bombay High Court accordingly held that no cess can be levied on oil produced from oil cakes.

3.2. In case of integrated plant where the raw material does not come into the existence independently and is not available for assessment no cess can be levied.

3.3. The definition of vegetable oil excludes levy of cess on such vegetable oil which has been subjected to any process subsequent to the recovery of the oil. Since such oil which comes into existence in the integrated plant is directly taken for processing no cess is leviable no such oil.

3.4. In regard to extraction of oil directly from the oil seeds however he concedes that view of the reported judgments he is not pressing this case.

3.5. The duty was paid under protest and therefore their claim is not time barred.

4. Arguing for the Revenue, the Ld. D.R. submits that the case is covered in their favour in view of the judgment and . Further, the leviability of cess on such

vegetable oil has been upheld by the Hon'ble Apex Court in case of B.K. Industries v. UOI . In case ofJayalakshmi Cotton & Oil Products P. Ltd. v. CCE the Tribunal held that cess is leviable on vegetable oil produced from oil cakes in terms of Section 3 of the Act (30 of 1983).

5. We have heard both sides. Three Member Bench of this Tribunal in case of Jayalakshmi Cotton & Oil Products P. Ltd. while dealing with the case where appellants were engaged in producing vegetable oil and processing the same held that such cess was leviable.

The cess is levied on raw oil as such and not refined oil. In view of this we reject the argument that no cess would be leviable in case of integrated plant. We therefore hold following the ratio of the earlier judgment quoted by us, cess was correctly leviable in case of vegetable oil produced from oil seeds. In regard to vegetable oil produced from oil cakes it is true that Tribunal in case of Jayalakshmi Cotton & Oil Products P. Ltd. v. CCE cakes is nothing but remnant of oil seeds after most of the oil contained therein has been extracted by pressing them in an expeller or a similar machine. Such oil seeds or oil cakes continue to be of plant origin and therefore cess is leviable in terms of Section 3 of the Vegetable Cess Act, 1983. The Tribunal relied on the judgment of the Andhra Pradesh High Court in case of Andhra Pradesh Rice Bran Solvent Extractors Association v. UOI (supra). We however note that the judgment of the Hon'ble Supreme Court in case of State of Punjab (supra) and Bombay High Court in case of Bushier Oil Mills (supra) do not appear to have been brought to the notice of the Tribunal since there is no reference to these judgments. In case of Ranchi Solvent Oil Industries v. CCE Calcutta , the tribunal held that oil extracted by solvent extraction process from oil cakes does not come within the definition of "vegetable oil" as defined in National Oil Seeds and Vegetable Oil Development Board Act, 1983. The Tribunal in this case also relied upon case of Andhra Sugars Ltd. v. CCE where Tribunal in the Final Order No. 284-287/95-C dt. 13.9.1993 held the same view.

6. Following the ratio of the judgment therefore we hold that cess is leviable on oil extracted from oil seeds but cess is not leviable on oil extracted from oil cakes through solvent extraction process. Ld.

D.R. submits that the Collector (Appeals) has considered the question of oil derived from oil cakes and the Ld. Counsel concedes cases were it was derived from oil seeds and in fact submits a statement indicating those cases and the quantities involved where the issue was only oil produced from oil cakes and where issue was oil produced from oil seeds. We, therefore, consider it necessary that this matter should be verified as also the claim that duty was paid under protest.

7. We therefore remand the matters for de novo decision to the original adjudicating authority in the light of direction in this order and for taking de novo decision in accordance with law and after affording opportunity of personal hearing. Appeals disposed of in these terms.