Collector of Central Excise, Hyderabad

Vs

M/S Jayant Oil Mills Pvt. Ltd.

C.A. No. 729 of 1983

Collector of Central Excise, Madras

Vs

M/S Tata Oil Mills Co. Ltd.

C.A. No. 2479 of 1987

(Sabyasachi Mukharji, S. R. Pandian JJ)

31.03.1989

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is an appeal under Section 35-L of the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act') from the order of the Custom, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as 'CEGAT'). The respondent M/s Jayant Oil Mills Pvt. Ltd., Hyderabad, manufactures hydrogenated rice bran oil which was sold to industrial consumers. The said hydrogenated rice bran oil is used as raw material in the manufacture of soap. The respondents, M/s Jayant Oil Mills Pvt. Ltd. filed a classification list dated May 20, 1981 in respect of the said goods classifying the same under Tariff Item 12 for approval and claimed exemption under Notification No. 9/60 dated February 20, 1960. The Assistant Collector of Central Excise, Hyderabad III Division by an order dated June 16, 1981 held that the hydrogenated rice bran oil was classifiable under Tariff Item 68 of the Central Excise Tariff (hereinafter referred to as 'CET'), because hydrogenated rice bran oil is solid at the ordinary temperature and therefore should be considered as fat and not as oil. The Assistant Collector observed that there was one opinion that the said goods could not fall under Tariff Item 12 as it was unfit for human consumption. The Assistant Collector observed that the said goods was new product after manufacture, having a distinct name, character and use and as such it fell under Tariff Item 68-CET. The respondent on the other hand maintained before the Assistant Collector that the said goods was semi-solid and still vegetable non-essential oil falling under Tariff Item 12-CET.

2. Being dissatisfied with the order dated June 16 1981, the respondent appealed before the Appellate Collector of Central Excise, Madras, by an order dated November 30, 1981, the Appellate Collector held that hydrogenated rice bran oil is classifiable under Tariff Item 12-CET and therefore ordered for consequential relief to the respondent.

3. The order of the Appellate Collector holding that the said products are classifiable under Tariff Item 12-CET had not been reviewed by the Central Government under Section 36 (2) of the Act.

The Appellate Collector was therefore of the view that even after the superhardening or hydrogenation vegetable oil did not cease to be oil even if it became solid.

4. The Central Government, Ministry of Finance, Department of Revenue, being of the view that the order of the Appellate Collector was not proper, legal and correct, issued a show cause notice dated May 12, 1982 to the respondent. The Central Government informed the respondents in the show cause notice that it appeared to the government that the hydrogenation of rice bran oil is a process of manufacture which brings into existence a new product known as hydrogenated rice bran oil in commercial parlance having a distinct name, character and use and this end product would have been classified under Tariff Item 13 had it been fit for human consumption. It was further observed in the said show cause notice by the government that as the melting point of the hydrogenated rice bran oil is more than 45 degree Celsius it was of the nature of extra-hardened, vegetable product which was unfit for human consumption and since it was distinct from vegetables non-essential oil it would prima facie be classifiable under the residuary Tariff Item 68-CET.

5. The respondents were, therefore, called upon to show cause as to why the order of the Appellate Collector should not be set aside and that of the Assistant Collector restored.

6. The matter came up before the CEGAT. The CEGAT noted in its impugned order that the appeal was concluded by the judgment of the five member Bench of the Tribunal in the case of M/s Tata Oil Mills Co. Ltd. ((1986) 24 ELT 290), and held that the order dated November 30, 1981 of the Appellate Collector was correct and dismissed the appeal of the appellant.

7. It is necessary, therefore, to refer to the order of the CEGAT. The CEGAT noted that vide order dated June 16, 1981 the Assistant Collector classified the hydrogenated rice bran oil manufactured by the respondents, M/s Jayant Oil Mills Ltd., under Tariff Item 68-CET. The question, therefore, that was urged before this Court was whether the CEGAT was in error in holding that the hydrogenation of rice bran oil was a process of manufacture which brought into existence a new product i.e., hydrogenated rice bran oil.

8. Indubitably hydrogenation of rice bran oil is a process. But all processes need not be manufacture. It must be such a process which transforms the old articles into goods and changes the identity, use and the purpose of use of the goods undergone by the process. By the process which can be considered to be manufacture a new identifiable goods in the sense known in the market as such must come into being. But that is one part of the view. It appears, however, that the melting point of the hydrogenated rice bran oil is 45 degree Celsius and it is in the nature of extra-hardened vegetable process which is unfit for human consumption. It was taken to be classifiable under Tariff Item 68-CET.

9. Similar are the facts in Civil Appeal No. 2479 of 1987 before us in the matter of Collector of Central Excise, Madras v. M/s Tata Oil Mills Co. Ltd. There also, the CEGAT allowed the appeal of the respondents and held that the extra-hardened rice bran oil continued to remain as oil classifiable under Item 12-CET. It is necessary to decide in both these matters the nature of the product.

10. Rice bran oil is extracted out of rice bran by solvent extraction method. After such extraction, rice bran oil obtained is in liquid form. The parties purchase rice bran oil from the market and process it. The process is reported to be as follows. The oil is heated to above 80 degree Celsius and the impurities are removed by adding oxalic acid and caustic lye. The purified oil is then bleached by heating it to 85 degree Celsius to 100 degree Celsius and thereby treating with fullers earth. The

processed oil is then hardened by passing it through hydrogen gas. During hydrogenation, the oil absorbs two atoms of hydrogen and the unsaturated fatty acid present in the oil becomes saturated. The oil is then in a semi-solid condition and its melting point is raised to 45 degree Celsius or more. In the hardened state the oil looks like vanaspati (or vegetable product, to us the central excise terminology) but there is a difference in the degree of hydrogenation of the two. The melting point of vanaspati, which is commonly used as cooking medium, does not exceed 37 degree Celsius while the melting point of hardened rice bran oil in dispute before us is between 45 degree Celsius - 52 degree Celsius. At such high melting point, the oils are no longer edible by human beings. In order to differentiate between edible hydrogenated oils (vanaspati) and super-hydrogenated vegetable oils, the latter are referred to as extra-hardened oil or super-hardened oil. The record before us shows that they are also known as 'vegetable tallow' or 'hard lump' or 'hardened technical oil 'or' industrial hard oil' or just 'hardened oil'. This hardening of oil is necessary for soap making; otherwise, the soap, on coming into contact with water, is likely to become soggy. The respondent use the hardened oil for soap making within their factories. Besides its use in soap making, the extra-hardened oil is also put to various other industrial uses, such as for application as grease.

11. The dispute started when the appellants filed their classification list containing the following entry at S. No. 3 :

> 3. Rice Bran Oil - processed-in barrels-exempted-*33/63-CE dated March 1, 1963 as amended (*Rule 56-A procedure to be followed for outside dispatches).

The Assistant Collector approved the classification under Item 12-CET ("vegetable non-essential oils, all sorts") with benefit of full exemption from duty under Notification No. 33/63-CE dated March 1, 1963 as claimed by the appellants for soap making. The Collector, however, was tentatively of the opinion that the Assistant Collector's order was not correct. In exercise of his power of revision under the then Section 35-A of the Act, the Collector called upon the appellant to show cause as to why the hardened oil should not be subjected to two-stage duty. After hearing the appellants, the Collector passed the orders by which he confirmed the two-stage duty. Being aggrieved by the Collector's order, the appellants filed a revision application before the Central Government which, on transfer of the proceedings to the Tribunal, was transferred to the Tribunal.

12. The matter was heard by a three member Special Bench. It was resolved that a larger bench should be constituted and a larger bench had been constituted. It was noted by the bench that irrespective of the fact whether extra-hardened rice bran oil produced by the parties was classified under Item 12 CET or Item 68 CET, it would remain fully exempt. On behalf of the parties, the respondents herein, it was argued before the Tribunal that hydrogenation or hardening was a process in the course of manufacture of a soap. The extra-hardened oil came into existence during soap manufacture at an intermediary stage and such oil was not a new product by itself. Secondly, it was urged that even if the extra-hardened oil was considered as a new product, its character still remained that of oil. It was the same oil though in a hardened or semi-solid form. The form was not material as it only meant that by application of heat at 45 degree Celsius or more, it would again turn into liquid oil. As such, the oil, even in its hardened form, continued to remain under Item 12-CET as it still was essentially oil only. The process of hydrogenation was intended to make the oil fit for soap making. Only that part of hydrogenated oil as was fit for human consumption fell under Tariff Item 13 (vegetable product); the rest remained under Tariff Item 12-"vegetable non-essential oils, all sorts..... ".

13. Reference may be made to the decision of this Court in Tungabhadra Industries Ltd. v. CTO

((1961) 2 SCR 14 : AIR 1961 SC 412 : (1960) 11 STC 827). There the appellant purchased groundnuts out of which it had manufactured groundnuts oil. It also refined the oil and hydrogenated it converting it into vanaspati. It sold the oil in the three States. Under the Madras General Sales Tax Act, 1939, and the Turnover and Assessment Rules, for determining the taxable turnover the appellant was entitled to deduct the purchase price of the groundnuts from the proceeds of the sale of all groundnuts oil. The High Court, in that case, held that the appellant was entitled to the deduction in respect of the sales of unrefined and refined groundnut oil but not in respect of the sales of hydrogenated oil on the ground that the vanaspati was not "groundnut oil" but a product of groundnut oil. This Court, however, held that appellant was entitled to the deduction in respect of the sales of hydrogenated groundnut oil also. The hydrogenated groundnut oil continued to be "groundnut oil", notwithstanding the processing which was merely for the purpose of rendering the oil more stable. To be groundnut oil two conditions had to be satisfied : it must be from groundnut and it must be "oil". The hydrogenated oil was from groundnut and in its essential nature it remained an oil. It continued to be used for the same purposes as groundnut oil which had not undergone the process. A liquid state was not an essential characteristic of a vegetables oil; the mere fact that hydrogenation made it semi-solid did not alter its character as an oil. In our opinion, the same principle would be applicable to the facts and the problem herein.

14. In this connection, reference may be made to the observations of this Court in Champak Lal H. Thakkar v. State of Gujarat ((1980) 4 SCC 329 : 1981 SCC (L & S) 9 : AIR 1980 SC 1889), though it was a criminal case, this Court observed that vanaspati was essentially an oil although it was a different kind of oil than that oil (be it rapeseed oil, cottonseed oil, groundnut oil, soyabean oil or any other oil) which forms its basic ingredient. Oil would remain oil if it retained its essential properties and merely because it had been subjected to certain processes would not convert it into a different substance. In other words, although certain additions had been made to and operations carried out on oil, it would still be classified as oil unless its essential characteristics had undergone a change so that it would be misnomer to call it oil as understood in ordinary parlance. Such change was not supported by the evidence in that law. The Tribunal found so and it is a question of fact that the hydrogenated rice bran oil still remained oil.

15. On behalf of the interveners, it was further submitted before the Tribunal that Item 12-CET which dealt with vegetable i98 vnon-essential oils, all sorts, was a specific, exhaustive and all pervasive entry and it continued to cover the extra-hardened oil. Our attention was drawn to the different degree of hydrogenation.

16. It may be appropriate to refer to the relevant items in the First Schedule to the Central Excise Tariff. Item 12 provides as follows :

> 12. Vegetable non-essential oils, all sorts, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.

Items 13 provides as follows :

> 13. Vegetable Product - 'Vegetable Products' means any vegetable oil or fat which, whether by itself or in admixture any other substances, has by hydrogenation or by any other process been hardened for human consumption.

17. The Tribunal, therefore, in our opinion, was right on a conspectus of the relevant factors in coming to the conclusion that edible rice bran oil falling under Tariff Item 12-CET would even after

extra-hardening continue to fall under Tariff Item 12 and not fall under Tariff Item 68 because it would be vegetable non-essential oils, all sorts, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power. In that view of the matter, it would not come within Tariff Item 68. The Tribunal, it appears to us, has considered the technical side of it, the manner of its production, and in view of the principle laid down by Tungabhadra Industries Ltd., case ((1961) 2 SCR 14 : AIR 1961 SC 412 : (1960) 11 STC 827), which in our opinion was essentially application to the facts of this case. The Tribunal, in our opinion, came to the correct conclusion.

18. Justice Pendse of the Bombay High Court in IVP Ltd. v. Union of India ((1986) 25 ELT 615 (Bom), had occasion to consider some aspects of this problem. It was held by the learned Judge that the plain reading of Item 13-CET indicated that the vegetable products which fell under that item must be one for human consumption. It was not in dispute in that case that the product manufactured by the petitioners was used only for the industrial purposes and not for human consumption and, therefore, Tariff Item 13 could not be attracted. Whether Tariff Item 12 or Tariff Item 68 would be applicable to the products manufactured by the petitioners, it is well settled that resort could not be had to the residuary item if the product comes within the ambit of any other tariff item. It is, therefore, necessary to ascertain whether Tariff Item 12 is applicable for levy of excise duty in respect of hardened vegetable oil. Tariff Item 12 bring in its sweep "vegetable non-essential oils of all sorts" and the expression "all sorts" would bring in its ambit hydrogenated oil. There is hardly any distinction between vegetable oil in liquid form and the hydrogenated oil which is hardened with a melting point higher than 41 Deg C. Apart from the distinction in the physical appearance, there is no distinction between oil and hydrogenated oil which is well supported by the decision of this Court in Tungabhadra case ((1961) 2 SCR 14 : AIR 1961 SC 412 : (1960) 11 STC 827), where this Court held that several oils are viscous fluids but those do harden and assume semi-solid condition on the lowering of the temperature. Therefore, it is obvious that hydrogenated oil is nothing but hardened vegetable oil which would fall within Tariff Item 12 CET for the purpose of central excise duty.

19. Our attention was drawn to Encyclopaedia Britannica, 1968, Vol. 19 p. 302 where preparation of rice is indicated. It states as follows :

> The kernel of rice as it leaves the thresher is enclosed by the hull, or husk and is known as paddy or rough rice. Rough rice is used for seed and feed for livestock, but most of it is milled for human consumption by removing the hulls. Rice is a good energy food, and is consumed in vast quantities in the Orient. In the Western Hemisphere, however, rice is not the staple cereal food, except in certain Caribbean islands.

20. Our attention was also drawn to certain observations of the Tribunal in Vital & Vital Oil Pvt. Ltd. v. Collector of Central Excise, Bombay ((1985) 21 ELT 166 (New Delhi), where the Tribunal observed that the department advocates assessment of hardened technical oil under Tariff Item 68. This item is only for goods not specified anywhere else. According to department, "all other goods not specified elsewhere" is more specific than "vegetable non-essential oils, all sorts". But it has to be borne in mind that the basic rule of construction is that a more specific item should be preferred to one less so. It does not take much to see whether "goods not specified elsewhere" is more specified than "vegetable non-essential oils" for a product that has an oily nature, is produced from an oil has the uses of an oil, and indeed looks like an oil, and is quite commonly accepted and spoken of an an oil and is so related to oil, that it has a little or no chemical. If hydrogenated oil can

harden, so can many oils if subjected to heat loss (in winter or by chilling). It appears to us, therefore, that Tariff Item 12 is more specified than Tariff Item 68, for all hardened technical oil not fit for human consumption and such would cover under this category.

21. In the aforesaid view of the matter, we are of the opinion that the Tribunal particularly emphasised that the hardened technical oil is the same thing as the oil from which it is made. It is clearly akin to the oil in homologue, a product of scientific modification but unaltered in its essential character. Therefore, in our opinion, the Tribunal was right in the conclusion it arrived at.

22. The Tribunal in both the appeals had taken into consideration all relevant and material factors, and market parlance and borne in mind the correct legal principles. The decision of the Tribunal, therefore, cannot be assailed.

23. In the premises, as both the appeals deal with the same facts, these are dismissed. There will, however, be no order as to costs.

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