SUPREME COURT OF INDIA

COLLECTOR OF CUSTOMS & CENTRAL EXCISE, GUNTUR ETC.
Vs.

M/S. SURENDRA COTTON OIL MILLS & FERT. CO. ETC. ETC.

15/12/2000

(British Kumar, U.C.Banerjee)

Appeal (civil) 3732-3760 of 1997
Appeal (civil) 3762-3774 of 1989
Appeal (civil) 1685-1691 of 1997

J U D G M E N T

BANERJEE,J.

This batch of appeals against the order of Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) pertain to classification of de-oiled rice bran extraction, niger seed extraction of topioca chips and sesame seed extractions as animal feed falling under Tariff Heading No.21 of the Second Schedule to the Customs Tariff Act, 1975. The core question thus relates to the factum of export duty being leviable thereon during the relevant period CEGAT has answered that since these products are only ingredients of animal feed and not animal feed by themselves, the same would not come within the ambit of the term animal feed as detailed in the statute. Shri Mukul Rohtagi, the learned Additional Solicitor General, appearing for the appellant, very strongly contended that differentiation, there might be as regards the product, but the factum of the product being an ingredient or a supplement to the animal feed would definitely bring it within the scope of Heading 21 of the Customs Tariff Act Heading 21 does not, in fact, differentiate between the ingredients of animal feed and an animal feed neither the entire Tariff Act introduced such a differentiation but the factum of the same being a part of the whole, the same cannot escape the export duty. Admittedly. the contextual facts depict that these are ingredients of animal feed and it is on this score the Tribunal came to the conclusion that the ingredient does not by themselves become an animal feed unless the same is mixed with some other elements and since the statutory requirement for levy of duty is animal feed, in order to have the export duty attributed thereto, question of the same being not within the ambit of the item does not and cannot arise. Be it recorded that the term animal feed has not been defined in the Tariff Act and as such we are left with no alternative excepting noting the ordinary dictionary meaning of the word or the user and understanding of the word in common parlance. In IS 9703-1980 it is found in para 0.2 as below:- In the field of animal feeds manufacturing industry a large number of feeding stuffs (ingredients) are utilised, which may be by-products of other industries and also subjected to certain processing before utilisation.

IS 9703 thus recognises a distinction between the feeding stuffs (ingredients) and animal feed. The understanding of the Indian Standard Institution, as referred in IS 9703, thus goes to suggest that ingredients by themselves cannot be termed to be animal feed - It may be a component or ingredient or a basic stuff, but it cannot be termed to be animal feed. A very common example on this score remains that of oil cakes whereas oil cakes are used as protein supplement in livestock food stuffs

and mixed with the animal feed, oil cakes by themselves cannot be termed to be an animal feed, since animal feed not only consists of its ingredients but the total bulk in form, shape and size which would feed an animal. Animal feed thus cannot be an ingredient or a part of the feed but in its entirety and as a whole taken together with even vitamins and calcium mix.

The whole substance thus is the mix and not any specific item as such. Reference has been made to the decision of this Court in Sun Export Corporation, Bombay v. Collector of Customs, Bombay & Anr. [1997 (6) SCC 564] wherein this Court recorded with concurrence the observations of the Gujarat High Court in the case of Glaxo Laboratories (India) Ltd. v. State of Gujarat [1979 (43) STC 386 Gujarat] to the affect that it cannot be said that animal feed concentrates are not animal feed. In the same manner products which supplement animal feed and which generally added to animal feed are also covered by the generic term animal feed. The situation however, is not the same in the instant matter. In the case of Sun Exports Corporation (supra), it was animal feed and animal feed supplements and by reason of the exemption notification for animal feed, this Court came to a definite conclusion that animal feed includes animal feed supplements and as such M/s Sun Exports Corporation was declared to be entitled to refund under the relevant exemption notification. The brief facts as appears from the decision (at page 565) leading to these appeals are as follows: The appellant Corporation imported six consignments of goods [Pre-mix of Vitamin AD-3 Mix (feed grade)] at Bombay and seven consignments of similar goods at Calcutta. These consignments were assessed to duty under the heading 29.01/45(17) of the Customs Tariff Act, 1975 read with Item 68 of the Central Excise Tariff Act, 1985. The Corporation paid the duty. Later on, it claimed refund of the duty paid as countervailing duty contending inter alia that the goods imported were classifiable under Item 23.01/07 as Animal Feed and as per Notification No.234/82-CE dated 1.11.1982, those goods were exempted from levy of duty. Accordingly, applications were filed for refund of the countervailing duty/additional duty paid on such imports. The Assistant Collector (Refunds) concerned rejected the claim of the appellant holding that the goods imported were assessable to duty under the heading 29.01/45(17) of the then prevailing First Schedule to the Customs Tariff Act read with Item 68 of the Central Excise Tariff and therefore, the Exemption Notification dated 1.11.1982 was of no avail to the Corporation.

3. Aggrieved by the rejection of refund applications the appellant preferred separate appeals one set before Collector of Customs (Appeals), Bombay and another set before Collector of Customs (Appeals), Calcutta. The appellate authority at Bombay accepted the claim of the appellant and granted the relief holding that the goods imported were in the nature of Animal Feed Additives and as such fall under the heading 23.01.07. However, the appellate authority at Calcutta rejected the claim of the appellant and dismissed the appeal accepting the view of Assistant Collector (Refunds).

It is on this factual backdrop this Court in paragraph 14 of the report observed as below: 14. We have carefully gone through the minority and the majority views of the Tribunal. We find that Shri K. Gopal Hegde who has dealt with the issue in extenso, has taken note of the ratio laid down by the Bombay and Gujarat High Courts as well as a subsequent decision of the Tribunal itself in CCE v. Punjab Bone Mills (1988) 38 ELT 389 (Trib) (Appeal No.615/85-C with E/Cros/64/1988-C) for coming to a conclusion that the goods imported by the appellants are eligible for exemption under Notification No.234/82. However, this view was the minority view and, therefore, the exemption claimed by the appellant was denied. The majority view, it appears, was influenced by the fact that a decision of the Tribunal in Aries Agro-Vet Industries (P) Ltd. v. CCE (1984) 16 ELT 467(Trib) taking a similar view, was challenged by filing Civil Appeal No.17 of 1984 and that was dismissed at the admission stage. It must be noted that presumably the amendment to Exemption Notification No.234/82 by a subsequent Notification No.6/84-C.E. dated 15.2.1984 was not before the Court for

consideration. The majority view also failed to take note of the subsequent amendment to the main exemption notification as well as the effect of the amendment as noticed by the Bombay High Court in Glindia Ltd. case [(1988) 36 ELT 479 (Bom)]. Since we have already extracted in extenso the decision of the Bombay High Court, we do not think it necessary to repeat the same.

While it is true that the decision in Sun Exports Corporations case (supra) delved into animal feed but by reason of the factual situation as noticed above, the same is clearly distinguishable and, in fact, does not lend any assistance in the matter in issue.

It is on this perspective it can not but be held that the oil cakes and rice bran as exported by the respondents cannot thus be termed to be animal feed warranting invocation of Heading 21 of the export tariff under the Customs Act. The Judgment of the Tribunal cannot be faulted in any way. This batch of appeals therefore fail and are dismissed without however any order as to costs.