(1983) 05 DEL CK 0017

In the Delhi High Court

Case No : Civil Writ Petition No. 1207 of 1981

Anil Starch Products Ltd. APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 19-05-1983

Acts Referred:

Citation : (1983) 14 ELT 1681

Hon'ble Judges : Prakash Narain, J;B.N. Kirpal, J

Bench : Division Bench

Judgement

B.N. Kirpal, J.—In this writ petition, under Article 226 of the Constitution of India, the petitioner has challenged the validity of the order of Government of India holding that "Wet dextrose'' is a product which is classifiable under Tariff Item No. 1-E and, Therefore, excise duty is payable thereon when the same is manufactured by the petitioner.

2. The petitioner, inter alia, manufactures "Dextrose Monohydrate'' and another product called ''Sorbitol''.

According to the impugned order, the petitioner manufactured Dextrose by adopting the following process :-

(a) Starch milk is liquified under controlled conditions;

(b) The liquified material is subjected to conversion or scarification by help of Chemicals;

(c) Scarified liquid is refined for colour removal and other impurities and then subjected to concentration by evaporation process;

(d) Concentrated Liquor is then crystallized ;

(e) Crystallised material is then subjected to centrifuge process when dextrose crystals and liquid materials are separated. The dextrose crystal containing about 20% moisture is "Wet Dextrose".

(f) The so-called wet dextrose as stated by the petitioner, is then dried in a flash dryer Dry material containing 7% to 9% moisture is then sieved in a sifter to obtain powder, called dextrose monohydrate which is packed in HDPE bags.

3. Before the Excise Authorities, the petitioner contended that "Wet dextrose" falls outside the mischief of the Central Excise Tariff and no excise duty is payable when the said product comes into existence.

The Assistant Collector, who had issued a show cause notice, did not agree with the submissions made by the petitioner and came to the conclusion that wet dextrose was classifiable under Tariff Entry 1-E. The said item reads as under :-

"Item No. 1E Glucose and dextrose Item No. : Tariff description Rate of duty

1E Glucose and dextrose and preparations thereof : (i) Glucose in whatever form, including liquid glucose, dextrose monohydrate and anhydrous dextrose. (ii) Preparations of glucose and dextrose in which the reducing sugar expressed as anhydrous dextrose amount to more than eighty per cent by weight

After the passing of the order by the Assistant Collector samples were drawn of wet dextrose for being sent for Chemical examination. According to the petitioner it was not informed about the report of the Chemical Examiner.

4. Against the order of the Assistant Collector an appeal was filed by the petitioner before the Collector of Central Excise (Appeals). The Collector of Central Excise, however, dismissed the appeal and approved the conclusion which had been arrived at by the Assistant Collector.

5. The petitioner then filed a revision petition before the Central Government. It was, inter alia, contended by the petitioner that wet dextrose was not a finished product and was not known as merchandise to people who deal with Glucose and Dextrose. It was also stated that dextrose monohydrate and nor was the said product removed from the place of manufacture at any stage.

6. By order dated 28th December, 1981, the revision petition was dismissed by the Central Government. In its order the Central Government referred to an observation contained in Encyclopedia Chemical Technology by Kirk Othmer, 2nd Edition, Vol. VI wherein in para 5, it had been observed as follows :-

"Dextrose is shipped in bags Bulk Hopper cars and a concentrated solution, in tanks, trucks and tank cars. It is also sold in liquid blends with sucrose. Where it is shipped as concentrated solution, it is held above 120 degree C of to prevent crystallization "

The Central Government, thus, appeared to take the view that wet dextrose could be transported. It also had that Tariff Item 1-E was comprehensive enough so as to encompass the goods in question. According to it, there was no difference between wet dextrose and dextrose monohydrate, except that there was more moisture in wet dextrose. The Central Government observed that wet dextrose had the same Chemical composition as dextrose monohydrate and that colour, taste and specific rotation were also the same. It also held that merely because wet dextrose was not being removed, it did not mean that the same was not taxable.

7. The aforesaid order of the Central Government is challenged before us by way of a petition under Article 226 of the Constitution. It is vehemently contended on behalf of the petitioner that the conclusion of the Central Government is incorrect and some relevant material has not been taken into consideration by it.

8. One of the factors which seems to have influenced the decision of the Central Government is that it appeared to take a view that wet dextrose could be transported. It is for this reason that the Central Government quoted the aforesaid passage from the Encyclopedia Chemical Technology by Kirk Other .In our opinion, reference to the said passage is misplaced. In that very Encyclopedia the process for manufacture of dextrose monohydrate is indicated, which is the same as has been noted hereinabove. There is no dispute that after the concentrated liquor is crystallised the same is subjected to centrifuge process. The result of this is that wet dextrose, which is also known as wet sugar, is separated from the mother liquor. According to the Encyclopedia, at page 924 it is specified that the mother liquor is either concentrated and crystallized in a similar manner to recover an additional crop of crystals, or may be partially recycled to the initial crystallization step to make possible recovery of the total yield as a single crop. As regards wet dextrose, the same proceeds to rotary dryers, where it is dried until it contains about 8.5% moisture and this, according to the petitioner, is known as dextrose monohydrate. In the passage quoted by the Central Government reference is not made to wet dextrose. The words "dextrose is shipped in bags Bulk Hopper Cars..." can have reference only to dextrose monohydrate which is in powder form. It is only that which can be shipped in bags or in Bulk Hopper Cars. Reference in the said passage, to "concentrated solution," which is shipped in tanks, trucks and tanks cars, can have reference only to mother liquor which is first concentrated before it is crystallised. "Concentrated solution" can only be a liquid, and wet dextrose which had moisture of about 14% cannot be termed as a concentrated solution. As at present advised, it appears that the crystals which remain after removal of mother liquor and have moisture of about 14% is what is known as "wet dextrose".

9. In our opinion the question as to whether wet dextrose has been or can be removed is of little significance. Now, with the amendment of Rules 9 and 49 of the Central Excise Rules, it is not necessary for an item to be removed from the place of manufacture in order to subject it to excise duty. If goods are manufactured then the same would be subjected to tax if the said goods are specified in the Excise Tariff.

10. In the present case, Therefore, if it can be shown that wet dextrose falls under Tariff Item 1-E then, notwithstanding the fact that the same may not be

removable after it has come into existence, it would still be exigible to the levy of excise duty.

11. As we read the relevant Entry, it appears to us that the following items can be subjected to the levy of excise duty :-

(a) Glucose in whatever form;

(b) Liquid glucose;

(c) Dextrose monohydrate;

(d) Anhydrous dextrose;

(e) Preparations of glucose and dextrose in which the reducing sugar expressed as anhydrous dextrose amount to more than eighty per cent by weight.

According to the learned counsel for the petitioner, wet dextrose is not glucose nor does it fall under any other item mentioned above. The Central Government have observed in its order that "the petitioners have themselves admitted that the wet dextrose can be sold subject to certain further process depending upon the purpose for which it is required to be used. It, Therefore, emerges that subject goods are capable of being sold though in actual practice in the case of the petitioners they are not being sold but being diverted for captive consumption". In our opinion the contention of the petitioner has not been correctly appreciated by the Government. The petitioner never admitted that wet dextrose can be sold as such. On the other hand, the submission of the petitioner has all along been that wet dextrose cannot be sold as it is not a finished product. Wet dextrose, it is contended, can be used either for the manufacture of Sorbitol or for the manufacture of dextrose monohydrate. In other words, the end products which are exigible to duty would be Sorbitol or dextrose monohydrate. Unless and until, it is submitted, wet dextrose is subjected to further process the end product, namely, glucose or dextrose monohydrate, does not come into existence. In our opinion, as the Central Government have wrongly construed the submission of the petitioner, the order passed on the alleged admission, though no admission was made, cannot be allowed to stand. The Central Government ought to have considered, after referring to technical books, if necessary, whether wet dextrose, without any further process, could be regarded as dextrose monohydrate, or glucose in any form, or any other type of product which falls under tariff Entry 1-E.

12. It may be as contended by the learned counsel for the petitioner, that without further processing wet dextrose cannot be regarded as dextrose as contemplated by the said entry. In this connection strong reliance was also placed on the process of manufacture of dextrose etc. as set-out in Longman de Bussy''s Materials and Technology, Vol. 7 at page 544. The diagram on that page shows the manufacture of glucose and dextrose from starch slurry. The said diagram tends to indicate that unless and until wet dextrose is put through a dryer the commodity known as dextrose does not come into existence. It also

shows that after purification and concentration wet dextrose comes into existence only if it is put through the crystallizer. If, however, glucose is to be manufactured then after purification and concentration, and after putting that mass through the crystallizer, it is dried and the same results in the coming into existence of solid glucose or, if it is not dried, that mass would be glucose syrup of different varieties.

13. We feel, however, that it is not for this Court to go into the question as to whether wet dextrose can categorically be regarded as dextrose or glucose or a preparation thereof. It is for the Authorities under the Act to give such a finding. The Central Government had wrongly assumed that the petitioner had admitted that wet dextrose could be sold. Furthermore, the Central Government ought to have taken into consideration, when there is a serious dispute or challenge before it, whatever technical material or literature that exists which could possibly enable it to arrive at a definite conclusion as to the nature and type of the product.

14. In our opinion, Therefore, it would be equitable, just and proper that instead of this Court giving a finding as to whether wet dextrose falls under Item 1-E, the impugned order of the Central Government is set-aside and this issue is decided afresh by the Authorities constituted under the Act.

15. For the aforesaid reasons the order dated 28th December, 1981 of the Central Government is quashed. As a result thereof, the revision petition filed by the petitioner against the order of the Collector of Excise (Appeals) stands revived and the Central Government is directed to transmit the same to the Excise, Customs and Gold (Control) Appellate Tribunal, which now has the jurisdiction to decide such revision petitions. It is hoped that the Tribunal will dispose of the case as expeditiously as possible, after notice to both the parties. The parties are left to bear their own cost.