(1999) 08 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 1159 of 1999

Bamni Proteins Ltd. APPELLANT

Vs

Central Board of Excise and Customs RESPONDENT

Date of Decision : 23-08-1999

Acts Referred:
Central Excises and Salt Act, 1944 — Section 37B

Citation : (2003) 90 ECC 897 : (2003) 156 ELT 650

Hon'ble Judges : D.D. Sinha, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : S.P. Dharmadhikari, U. Dastane and G. Sanghi, for the Appellant; Sajjad Hussain, for the Respondent

Final Decision : Allowed

Judgement

Srikrishna, J.—Rule returnable forthwith. Mr. Sajjad Hussain waives service for second respondent. By consent, rule called out and heard.

2. The petitioner manufactures Ossein and Di-Calcium Phosphate (D.C.P.) Animal Feed Grade. There was a controversy as to the correct classification in the Excise Tariff which was resolved by the Central Excise and Gold (Control) Appellate Tribunal (CEGAT) by its order dated 8-10-1992 reported in 1994 (70) E.L.T. 234 (Tri). The CEGAT took the view that the Di-Calcium Phosphate is to be classified under the Heading 23.02 and sub-heading 2302.00. The appeal of the Excise Department was dismissed and the appeal of the assessee was allowed.

3. After the judgment of the CEGAT, the Excise Commissioner issued an order purportedly u/s 37B of the Central Excise Act which had the effect of virtually overruling the judgment of the CEGAT. This notification was challenged before the High Court of Gujarat at Ahmedabad in Special Civil Application No. 3411 of 1991. The Gujarat High Court took the view that Section 37B does not empower or authorise the Board to issue directions which are contrary to the decision rendered by the Tribunal at Annexure-V of the petition. This order was carried to

the Supreme Court in the case of Commissioner v. Raymon Glues and Chemicals - 1998 (102) E.L.T. 424 (Tri) and the SLP was summarily dismissed. The view of the Appellate Tribunal that Di-calcium Phosphate animal feed grade is classifiable under Heading 23.02 and sub-heading 2302.00 of the Central Excise Tariff Act, 1985 stands confirmed.

4. In the circumstances, we see no reason why the petitioner is not entitled to the relief claimed in the writ petition. Hence the writ petition is allowed. Rule made absolute in terms of prayer Clause (a). The petitioner is at liberty to apply for refund of the amount collected without authority of law. No order as to costs.

