(2015) 05 SC CK 0053

In the Supreme Court Of India

Case No : Civil Appeal Nos. 1194-1195 of 2005 with Civil Appeal Nos. 5659-5662 of 2008.

Commissioner of Central Excise and Customs - Appellant @HASH Kraps Chem Pvt. Ltd.

Date of Decision : 01-05-2015

Acts Referred:

Citation : (2015) 319 ELT 622 : (2015) 16 SCC 670

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri K. Radhakrishnan, Sr. Advocate, Arijit Prasad, Ms. Rashmi Malhotra and B. Krishna Prasad, Advocates, for the Appellants; S/Shri V. Lakshmikumaran, M.P. Devanath, Vivek Sharma, Ms. L. Charanaya, Aditya Bhattacharya, R. Ramachandran, Hemant Bajaj, Anandh K. and Rajesh Kumar, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

1. The assessee/respondent herein is engaged in the manufacture of Guar Dal Powder. According to the respondent the aforesaid product is a product of milling industry and therefore classifiable under Chapter Heading 11.01. If the product falls in the aforesaid category it attracts nil duty. On the other hand, view which is taken by the Revenue is that after the aforesaid process of converting Guar Dal into powder is undertaken it becomes ''Gum'' and therefore it needs to be classified under Chapter Heading 1301.10. Show cause notice was issued which has resulted in demanding excise duty in the sum of Rs. 92,53,196/- along with penalty and interest.

2. Appeals against the said order have been allowed by the Tribunal, holding that it would remain a product of milling industry and therefore needs to be classified under Chapter Heading 11.01.

3. It is argued by Mr. Radha Kirshnan, learned senior counsel appearing for the appellants that it was pointed out before the Tribunal that in the case of Dilip Gum Industries v. CCE, Rajkot (Order No. A/772-773/WZB/2004/C-II) dated

1-9-2004 [2004 (174) E.L.T. 371 (Tribunal) the Tribunal held that ''Guar Gum'' is classifiable under Heading 1301.10. The Tribunal further noted that in another judgment given by the another Bench of the Tribunal viz., Hindustan Gum and Chemicals Ltd. v. CCE, Ahmedabad-II [2004 (91) ECC 289 = 2004 (163) E.L.T. 196 (Tribunal)] where the case is concerned tamarind Kernel powder (a kind of gum only) it was held to be classified under Chapter 11 as the product of milling industry and not a gum fall under Heading 13.01. Submission of Mr. K. Radhakrishnan is that in the aforesaid situation the Tribunal should have referred the matter to the Larger Bench for consideration. Instead, the Tribunal chose to follow the decision in Hindustan Gum and Chemicals Ltd., holding at the same time that the order in Dilip Gum Industries does not come as a binding precedent, which according to the learned senior counsel was impermissible.

4. We are inclined to agree with the aforesaid submission of learned senior counsel. After finding a conflict of opinion rendered by two coordinate Benches in the aforesaid two cases, the only course of action open for the Tribunal was to refer the matter to the Larger Bench to resolve this conflict. It may also be recorded that against the judgment of the Tribunal in Hindustan Gum and Chemicals Ltd. the Department had filed an appeal in this Court and this Court has referred the matter back to the Tribunal observing that some of the aspects have not been properly dealt with by the Tribunal. The said judgment remanding the case back to the Tribunal is reported as Commissioner of Central Excise, Ahmedabad v. Hindustan Gum & Chemicals Ltd. - 2011 (272) E.L.T. 336 (S.C.).

5. We, thus, set aside the impugned order and remit the case back to the Tribunal. We also direct that the matter shall be heard by a Larger Bench. We may record that in the impugned order the Tribunal has held that the aforesaid process constitutes ''manufacture''. Since in the case of Hindustan Gum and Chemicals Ltd. this issue was left open to be decided by the Tribunal, the Larger Bench of the Tribunal can take a fresh look into this issue in the instant case as well.

6. Having regard to the fact that the matter is quite old, we direct the Larger Bench of the Tribunal to decide the matter within six months from today.

7. The appeals are disposed of accordingly.

