

(1980) 12 BOM CK 0009
In the Bombay High Court
Case No : Writ Petition No. 1658 of 1975

Godrej Soaps Private Limited

APPELLANT

Vs

A.K. Bandyopadhyay and others

RESPONDENT

Date of Decision : 08-12-1980

Acts Referred:

Customs Act, 1962 — Section 19

Citation : (1981) 8 ELT 555

Hon'ble Judges : N.K. Parekh, J

Bench : Single Bench

Judgement

1. The Petitioners' case is that they manufacture and sell animal compound feed. That under a contract dated 14th June, 1971 entered into between them and Messrs. Rolimpex of Poland, the Petitioners had to supply 600 metric tonnes of this animal compound feed to the said firm. That they accordingly manufactured animal compound feed which was made up of the following ingredients :-

(a) Groundnut extraction meal 25% (b) White Sesame extraction meal 25% (c) Toasted cotton seed extraction meal 25% (d) Linseed extraction meal 10% (e) Kardi seed extraction meal 5% (f) Wheat bran 10%.

2. That on this animal compound feed being ready, the Petitioners, (as per the terms of the contract) submitted the samples thereof to the General Superintendence Company (I) Private Ltd. who inter alia, certified that the said feed was made up of the aforesaid ingredients.

3. That the Petitioners then made arrangements to ship the said goods to Poland, when the question of paying duty on the same cropped up. The Petitioners, by their Attorneys' letter dated 24th September, 1971 addressed to the Assistant Collector of Customs, inter alia, set out the facts and contended that no duty was payable on the same. As no reply was received, and as the customs authorities refused to pass the goods, and as the goods had to be shipped on or before the 3rd October, 1971, the Petitioners were constrained to file a Petition in this Court

being Misc. Petition No. 658 of 1971, inter alia, seeking a writ of mandamus, directing the Assistant Collector of Customs and the Union of India, to forbear from charging any export duty on the said animal compound feed. In the said Petition, the Petitioners annexed two affidavits, one of Chimanlal Ishrani and one of S. Gopalan, both businessmen who were in the trade of oilcakes, deoiled cakes and compound feed, inter alia, showing that in the business or commercial parlance animal compound feed was wholly distinct from de-oiled cakes. On this Petition, a notice of admission was issued and the Petition was made returnable on 2nd October 1971.,

4. It is the Petitioners' case that in the meantime the Deputy Collector of Customs passed an order dated 28th September, 1971 ordering the said consignment to be assessed and levying a cess at the rate of Rs. 125/- per metric tonne and 1/2% (one half per cent) ad valorem which was the rate of duty and cess respectively chargeable on de-oiled ground meal under item No. 19 of the 2nd Schedule of the Indian Tariff Act, 1934, read with a notification dated 15th June, 1966 as amended by a notification dated 24th June 1966. By the said order, the Deputy Collector of Customs held that on the break-up of the ingredients of the said animal compound feed it was apparent that the bulk of the animal compound feed consisted of de-oiled cakes and hence the same came within the compass of Section 19 of the Customs Act and fell under Item No. 19 of the Indian Customs and Central Excise Tariff, and were hence dutiable.

5. It is the Petitioners' case that in view of this order passed, the Petitioners, on the 2nd October, 1971 withdrew Misc. Petition No. 658 of 1971. The thereafter paid a sum of Rs. 74,934.47 p. under protest and cleared the consignment. On or about 5th November, 1971, the Petitioners made an application for the refund of this amount. On or about 16th December, 1971, the Petitioners filed an appeal against the demand for Rs. 74,934.47 p. The Appellate Collector of Customs, Bombay gave the Petitioners a hearing on the 29th June, 1973. At this hearing the Petitioners kept the said Chimanlal Ishrani and S. Gopalan present to enable the revenue authorities to cross-examine them if they so desired. By this order dated 30th June, 1973, the Appellate Collector of Customs dismissed the appeal. Being aggrieved by this order, the Petitioners filed a revision petition dated 28th December, 1973. Here again the Petitioners were granted a personal hearing. However, by an order dated 4th June, 1975, the 1st Respondent rejected the revision. Being aggrieved by these proceedings, the Petitioners have filed the present petition, inter alia, challenging the several orders.

6. The Respondents have contended (a) that the break-up of the animal feed shows that the animal compound feed consists of de-oiled cakes. That it hence come within the compass of Section 19 of the Customs Act and Item 19 of the Indian Customs and Central Excise Tariff, and was chargeable, (b) that the authorities had rightly levied duty and (c) that the Petitioners were hence entitled to no relief whatsoever.

7. In view of the rival contentions, what needs to be considered is that whether

this consignment of animal compound feed comes within the compass of Section 19 of the Customs Act and Item No. 19 of the 2nd Schedule of the Indian Tariff Act, 1934, and for this purpose what must at the outset be determined is the nature of the goods.

8. Now, according to the Petitioners, the consignment in question of the animal compound feed was made up of the following ingredients :-

(a) Groundnut extractive meal 25% (b) White Sesame extraction meal 25% (c) Toasted cotton seed extraction meal 25% (d) Linseed extraction meal 10% (e) Kardi seed extraction meal 5% (f) Wheat bran 10%.

This is borne out by the certificate dated 24th September, 1971 of the General Superintendence Company (I) Pvt. Ltd., and the shipping bill dated 25th September, 1971 (and which shipping bill has been accepted by the 3rd Respondent as correct). Furthermore, the Respondents have, at the hearing of the Petition, not disputed this position. The result of the combination of the five ingredients has been that the original article completely lost its identity and a new marketable product known as animal compound feed had come into existence. According to the Petitioners it was and it is not possible to separate these ingredients after the same were processed into animal compound feed. A perusal of the impugned orders also shows that the authorities have also accepted the position that it is not possible to separate these ingredients by ordinary process. Hence, the aforesaid new marketable product, which was a single product, had come into existence and this product was known as animal compound feed.

9. The affidavits of the said Chimanlal Ishrani and the said S. Gopalan filed by the Petitioners at the stage when the Petitioners filed their Writ Petition No. 658 of 1971 also show that in business parlance de-oiled cakes and the animal compound feed were and are known as two separate and distinct commodities. It is an admitted position that at the hearing of the appeal these two persons were kept present before the appellate authorities and the revenue authorities could have cross-examined them or otherwise questioned them regarding the stand taken up by them. This the revenue authorities did not care to do. On the other hand, from the impugned orders, it is evident that the revenue authorities just brushed aside these affidavits without assigning any reason. There is no reason to why these affidavits ought not to have been taken into consideration. These affidavits clearly go to show that in the market animal compound feed is known as a single commodity clearly different from de-oiled cakes.

10. If this commodity is a single commodity, then this commodity must be considered as a whole and cannot be considered from the point of view of an ingredient which goes to make up this commodity. This is also the view taken in the case of *The English Electric Co. of India Ltd. Vs. The Superintendent, Central Excise and Others*, Bearing this in mind and looking to the facts of this case, it is apparent that the authorities in question have ignored this principle and have

proceeded on the basis that since the bulk of animal compound feed consists de-oiled cake (which position also is incorrect), it came within the compass of Section 19 of the Customs Act and fell under Item No. 19 of the Indian Customs and Central Excise Tariff.

11. At this juncture, it would be necessary to look at Section 19 of the Customs Act, 1962 as also Item No. 19 of the Indian Customs and Central Excise Tariff.

Section 19 of the Customs Act, 1962 reads as follows :-

"Determination of duty where goods consist of articles liable to different rates of duty, except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows :

(a) articles liable to duty with reference to quantity shall be chargeable to that duty;

(b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates be chargeable to duty at the highest of such rates;

(c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under Cl. (b)."

Item No. 19 of the 2nd Schedule of the Indian Tariff Act, 1934, reads as follows :-

articles	Per	Rate	of	No.	Item Name of duty
groundnut meal (solvent	Tonne	Rs. 172.20	extracted	variety	19. De-oiled
than	1	per	cent	containing	less
				oil)	

12. Now Section 19 of the Customs Act speaks of a case where goods consist of "set of articles". In the present case, the goods viz. the animal compound feed does not consist of a set of articles for, as stated above, there is only one identifiable article viz. animal compound feed. In order to attract the provisions of Section 19 there must be a collection of articles or otherwise there must be a collection or aggregation of two or more individual and severally identifiable articles, which is not the case here. In the present case, the goods are made up of several ingredients, which have all lost their identities and have become inseparable even by common processes, and have in fact emerged as a single marketable product. Section 19 of the Customs Act has, therefore, no application whatsoever, and if this is the position, then there is no question of holding that it comes within the compass of Item No. 19 of the Indian Customs and Central Excise Tariff.

13. I may here add that in interpreting Section 19 of the Customs Act along with Item No. 19 of the Indian Customs and Central Excise Tariff, the Respondents pressed into service the two notifications referred to in the impugned orders and

it was strenuously contended by the Respondents that on construing these notifications, it must be held that the goods in question were covered u/s 19 of the Customs Act and came within the scope of Item No. 19 of the Indian Customs and Central Excise Tariff. Ordinarily, I would have dealt with this argument of the Respondents in detail, but Mr. Taraporwala, the learned Counsel for the Petitioners pointed out that the said notifications applied to Item No. 21 of the Indian Customs and Central Excise Tariff and the language thereof could not be stretched to interpret either Section 19 of the Customs Act or Item No. 19 of the Indian Customs and Central Excise Tariff. Mr. Taraporwala's contention was and is in order and I accept the same. In view of this, it is not necessary for me to deal with the said argument.

14. The sum total of this discussion is that the animal compound feed, although made up of five or more different ingredients, has clearly emerged as a single commodity and is known in the business circle or commercial parlance as such, and in view of this the provisions of Section 19 of the Customs Act are not attracted nor has Item No. 19 of the Indian Customs and Central Excise Tariff any application whatsoever in the present case. This being so, the impugned orders cannot be sustained.

15. I may here add that a similar question arose before the Delhi High Court in the case of *The Modern Mills Limited v. Union of India and others*, 1980 E.L.T. 639. In the said case the very question arose viz. whether animal feed or animal compound feed fell within the provisions of Section 19 of the Customs Act and/or Item No. 19 of the Indian Customs and Central Excise Tariff. On considering this matter, the said Court held that although the animal compound feed was made up of different ingredients, a new product had resulted and the identity of the material mixed was lost and the provisions of Section 19 of the Customs Act, 1962, or Item 19 of the Indian Customs and Central Excise Tariff would not be applicable.

16. In the result, the Petitioners must succeed and the rule must be made absolute in terms of prayers (a) and (b). The Respondents will refund the duty within three months from today. There will be, however, no order as to costs.