(2004) 03 DEL CK 0090

In the Delhi High Court

Case No : WP (C) 6974 of 2003

Mcton Trade Links APPELLANT

Vs

Commissioner, Customs and Others RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Citation : (2004) 03 DEL CK 0090

Hon'ble Judges : B.C. Patel, C.J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Vinay Garg, for the Appellant; Jayant K. Sud, Kalyan Dutt and A.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—The petitioner has filed this petition, inter alia, praying for issuance of a writ of mandamus directing respondents 1 and 2 to immediately clear the goods imported vide Bill of Entry No.107535 dated 13.08.2003, where the description of the goods imported is "partially hydrogenated vegetable fat". A copy of the said Bill of Entry is produced on record at pages 11 and 12. The duty on the said commodity came to be assessed in view of the provisions contained in the Customs Act for import of the commodity. A copy of which is produced on record at page 13 annexure P-4. At the time of assessment of duty samples were taken and were sent to the Central Food laboratory for testing. The Central Food Laboratory vide its letter dated 24.9.2003 forwarded the report of analysis of food to Deputy Commissioner of Customs with regard to the samples in question. The certificate issued by the Central Food Laboratory reads as under:

"Certified that the sample bearing number Nil purporting to be a sample of Partially Hydrogenated Vegetable Fat was received on 15.9.03/22.9.2003 with Memorandum No.107535 dated 29.8.03 from Dy. Commissioner of Customs, ICD., TKD., New Delhi for analysis."

2. It is further indicated, so far as the sample description is concerned, as under:

"The sample of Partially Hydrogenated Vegetable Fat was received in loose condition in a plastic bottle of 500 gm. Sample has been manufactured by partially hydrogenated of mixture of refined eatable (sic) oils such a soya oil, palm oil and sesame oil to be used for cooking purposes."

The opinion expressed by the Central Food Laboratory at page 132 reads as under:

"Opinion : The sample of Partially Hydrogenated Vegetable Fat is covered under standards of Vanaspati laid down in Item No.A.19 of Appendix `B'' of the PFA Rules (1955)."

The sample does not conform to the standards of Vanaspati laid down under Item No.A.19 of Appendix `B'' of the PFA Rules (1955) in that Baudouin''s Test and Vitamin `A'' are Negative. Hence, sample is adulterated."

3. The report is of 24.9.2003. It is contended on behalf of learned counsel for the petitioner that so far as "Partially Hydrogenated Vegetable Fat" is concerned, there is no provision in the Food Adulteration Act. It is further contended that the provisions contained in appendix `B'' of the Food Adulteration Act are applicable only for the commodities which are specifically indicated in Appendix B and not otherwise. According to him, the food in question cannot be said to be Vanaspati because it is "Partially Hydrogenated Vegetable Fat" and Therefore A.19 can not be applied in this case and the CFL test for conformity with standards prescribed for Vanaspati was not proper. Item A.19 (to the extent relevant for this case) reads as under :

" A.19[***] Vanaspati means any refined edible vegetable oil or oils, subjected to a process of hydrogenation in any form. It shall be prepared by hydrogenation from groundnut oil, cotton seed oil, and sesame oil or mixtures thereof or any other harmless vegetable oils allowed by the Government for the purpose. [Refined sal seed fat, if used, shall not be more than 10 per cent of the total oils mix]"

It is also required to be noted that by whatever name a commodity/food may be described on a label or Bill of Entry, but the contents of it on analysis would indicate its true nature, substance or quality.

4. The opening part of Entry A.19 makes it clear that any refined edible vegetable oil or oils which are subjected to a process of hydrogenation in any form will be known as `Vanaspati''. It may be edible oil of one type or an admixture of different types of edible oils, but if any process of hydrogenation is applied to it, then it will be known as `Vanaspati''. It is contended by the learned counsel for the petitioner that the goods in question being "Partially Hydrogenated Vegetable Fat" cannot be covered by Entry A.19. Our attention was drawn by the learned counsel for the respondent to the Indian Standard Specification for Vanaspati "First Reprint August 1985" UDC 664.34 VAN. The paragraphs 0.2 and 0.3 of the said document read as under:

"0.2 At present the specifications for Vanaspati are covered under the Prevention of Food Adulteration (PFA) Rules, 1955 and Vegetable Oil Products (Standards of Quality) Order, 1975 (VOP) issued by Ministries of Health, and Civil Supplies, Government of India, respectively. A need was, however, felt to formulate an Indian Standard on this subject, including its methods of sampling and test.

0.3 This specification is primarily based on the requirements prescribed under PFA Rules, and Vegetable Oil Products (Standards of Quality) Order, 1975 as amended from time to time. However, in line with the present practice, requirements for acid value and refractive index have been specified and their corresponding limits in terms of free fatty acids (FFA) and butyro refractometer (B.R.) reading have also been given."

So far as the meaning of `Vanaspati'' is concerned, it is given in para 2.1.1 of the said document as under:

"2.1.1 Vanaspati - Vanaspati means a blend of deacidified bleached, subjected to process of modification including partial hydrogenation and deodorized edible vegetable oils with specified quantity of refined vegetable oil(s) meant for human consumption.

Note- However, according to VOP, Vanaspati means hydrogenated vegetable oil meant for human consumption."

5. Thus, it is very clear from the ISI Standard that even partially hydrogenated Edible Oils are to be treated as `Vanaspati'' for the purposes of Food Adulteration Act and the Rules made there under.

6. Once the Central Food Laboratory has given an opinion acting under the provision of the Act then that opinion is final and conclusive and in view of this we do not find any reason to entertain the petition. Hence, the petition is dismissed.