(2021) 08 CESTAT CK 0080

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise Appeal No. 40475 Of 2016

M/s. Shree Annam Chemicals (P) Ltd. APPELLANT

Vs

Commissioner Of GST And Central Excise RESPONDENT

Date of Decision : 24-08-2021

Acts Referred:
Central Excise Act, 1944 — Section 11C

Citation : (2021) 08 CESTAT CK 0080

Hon'ble Judges : Sulekha Beevi C.S., J;P. Venkata Subba Rao, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The issue involved in this appeal is demand of central excise duty on Di-calcium phosphate (animal feed grade).

2. The ld. Consultant Shri R. Vijay appearing for the appellant submitted that the demand on the Di-calcium phosphate (animal feed grade) manufactured by them from rock phosphate and cleared them under CETH 2309 without payment of duty. As per Notification No. 7/1994 dated 1.3.1994, exemption was available for Di-calcium phosphate from payment of duty. The said notification was rescinded vide Notification No. 19/1996 dated 27.3.1996. hence, no such exemption was available thereafter. Duty was demanded by issue of Show Cause Notice for the disputed period proposing to reclassify the products under CETH 2835. It was contended by the appellant for the earlier period, in 2000, order was passed classifying the product under 2302 and they continued with the same classification and did not collect duty from buyers as Chapter 23 attracted NIL rate. Consequent to the introduction of eight digit code with effect from 28.2.2005, the appellants informed the department the revised classification as CETH 23099010 and cleared the goods under this classification. Later, Show Cause Notice has been issued proposing to classify under 2835.

3. He submitted that the product 'PROPHOS' - Animal Feed Supplement even

though classified under Chapter Heading 2835 is exempted from payment of central excise duty from 1.2.2008 to 1.2.2014 in view of Notification No. 4/2016-CE (NT) dated 12.2.2016 issued under section 11C of the Central Excise Act, 1944. The said Notification waives duty payable on Di-calcium phosphate manufactured (animal feed grade) out of rock phosphate origin falling under Heading 2835 of CETA, 1985. Exemption Notification 3/2014-CE (NT) dated 3.2.2014 has been issued for the subsequent period allowing exemption to the said product. He submitted that the demand for the entire period from 1.1.2010 to 2.2.2014 would not sustain. The Tribunal in the following cases have held that as Di Calcium Phosphate manufactured is arising out of rock phosphate, the 11C Notification dated 12.2.2016 would apply.

(i) KPR Fertilizers Vs. CCE, Vishakapatnam - Final Order No. A/3114 to 31119/2018

(ii) SPA Vet Min Pvt. Ltd. Vs. CCE, Vadodara - Final Order No. A/10677 to 10678/2017.

4. The ld. AR Shri Arul C. Durairaj appeared for the department.

4. Heard both sides.

5. The issue involved is classification of animal feed grade manufactured and cleared under brand name 'PROPHOS'. The department has classified the same under Chapter Heading 2835 as against classification under Heading 2309 adopted by appellant. It is seen that as per the Notification 4/2016-CE(NT) dated 12.2.2016, levy of duty of excise on di-calcium phosphate (animal feed grade) of rock phosphate origin falling under Heading 2835 of the First Schedule to CETA, 1985 is not required to be paid under the said Notification issued under section 11C of the Act.

6. Taking into account that the Notification issued under section 11C would apply in full force, demand confirmed cannot sustain. The impugned order is set aside. The appeal is allowed with consequential reliefs if any.

(Operative portion of the order was pronounced in open court)

