
(1984) 01 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No. 950 of 1980

Naarden (India) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-01-1984

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (1989) 20 ECR 369 : (1989) 39 ELT 530

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. The petitioners manufacture edible flavouring agents. On 1st March 1975 a notification was issued by the Central Government exempting inter alia all kinds of food produced and food preparations falling under Item 68 of the First Schedule of the Central Excises and Salt Act, 1944 from the whole of the excise duty leviable thereon. On 4th April 1975 the petitioners filed a classification-list claiming the benefit of the exemption under that notification. On 26th April 1975 the classification-list was rejected. The petitioners preferred an appeal. On 4th February 1976 the Appellate Collector of Central Excise, Bombay, held that since the product under appeal was a flavouring agent it fell under the notification. Accordingly, he allowed the appeal. On 30th April 1979 the petitioners were addressed a letter by the Superintendent, Central Excise, which stated that enquiries revealed that the flavouring agents manufactured by them were not entitled to the benefit of the exemption under the notification. As such, pending further enquiry, the flavouring agents would be provisionally assessed under Tariff Item 68 upon payment of duty at 8% ad valorem. The petitioners paid the duty under protest. On 1st May 1979 the Superintendent, Central Excise, addressed a second letter asking the petitioners to file a fresh classification-list in respect of the flavouring agents as falling under Tariff Item 68.

2. On 25th May 1979 the Superintendent addressed a show caused notice to the petitioners which specified the amount of excise duty due at Rs. 9,39,340.93.

The annexure to the show cause notice stated that enquiries had revealed that the petitioners' flavouring agents were not classifiable as food products or food preparations falling under the notification. On 26th June 1979 the petitioners showed caused and reproduced the order passed by the Appellate Collector of Central Excise. They submitted that by reason thereof the Excise authorities were precluded from issuing the show cause notice. No order having been passed upto 14th August 1980 and the petitioners having been compelled to pay under protest excise duty between 8th May 1979 and 31st July 1980, the petitioners filed this petition.

3. Mr. Berarwalla, learned counsel for the petitioners, relied upon the appellate order and submitted that in the light thereof the Excise authorities could not take a different stand.

4. Mr. Bulchandani, learned counsel for the respondents, stated that the Excise authorities had drawn samples of the petitioners' flavouring agents which had been tested by the Deputy Chief Chemist, Bombay, who, by his reports dated 16th June 1978 and 20th June 1978, had concluded that they were not food preparations. In Mr. Bulchandani's submission, these reports constituted fresh information or change of circumstances which entitled the Excise authorities to issue the impugned letters and the show cause notice.

5. Before passing the appellate order the Appellate Collector could have had samples drawn and a report made. He chose not to do so and passed the appellant order holding that the petitioners' flavouring agents were entitled to the benefit of exemption under the notification. The Excise authorities could have carried the matter in revision to the Central Government but chose not to do so. In these circumstances, the finding of the Appellate Collector binds the Excise authorities. Since Mr. Bulchandani submitted that it could not bind them for all time, I clarify that the Excise authorities are indeed so bound by an order of the Appellate Collector, unless reserved or set aside. No mere Superintendent of Central Excise can decide that as an order of an Appellate Collector was based on a wrong premise or was wrong and act contrary to it.

6. The petition is, accordingly, allowed. The letters dated 30th April 1979 and 1st May 1979 and the show cause notice dated 25th May 1979 are quashed and set aside.

7. Rule accordingly, with costs.