
(2006) 04 DEL CK 0122

In the Delhi High Court

Case No : Customs Act Case 1 of 2006

Sheel Agro Oils P. Ltd.

APPELLANT

Vs

Commissioner of Cus. and C. Ex.

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2(1)(A)

Citation : (2006) 204 ELT 31

Hon'ble Judges : T.S. Thakur, J;J.M. Malik, J

Bench : Division Bench

Advocate : Arvind Kumar Sharma and Kiran suri, for the Appellant; Jaswinder Singh, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—The case of the appellant is this. The appellant purchased a consignment of 1135.265 metric tonnes empty Hydrogenated vegetable oil i.e. Vanaspati from M/s. Sheel Chand Industries under a high sea sale agreement. The Sheel Industries had imported the impugned goods from M/s. Health Food Products Pvt. Ltd. Colombo, Sri Lanka under SAARC Area Free Trade Agreement vide notification No. 26/2000 dated 1-03-2000. As the consignment was of edible oil meant for human consumption three samples were drawn from the consignment. The same was sent to Central Food Laboratory, Ghaziabad and as per the test report, the melting point of the vegetable oil in question was 42.5 degree centigrade. It is beyond the limit prescribed under the Prevention of Food Adulteration Act (PFA). Since it was found to be adulterated, Therefore, the adjudicating authority confiscated the goods and imposed penalty on the appellant.

2. In the meantime, the appellant also sent the sample provided by the department to M/s. ARBRO Pharmaceuticals Ltd., a government approved test house, for testing purposes. Vide its report dated 14-5-2005, it reported that the melting point was within the prescribed limit i.e. 40.8 degree centigrade.

Consequently, the appellant vide their letter dated 17-5-2005 requested the learned Commissioner to send the remaining sample for re-testing to any other laboratory. The learned Commissioner vide order dated 16-6-2005 declined to send the sample for re-testing.

3. The appellant filed an appeal before the Tribunal. The Tribunal vide its order dated 11-7-2005 allowed applicant's application for waiver of the pre-deposit of penalty amount. Vide its order dated 13-7-2005, the Tribunal remanded the case while holding,

It is clear from what is stated above that the matter is required to be considered by the Adjudicating Authority after re-test of the samples as well as Cross Examination of the Chemical Examiner of the Central Food Laboratory. The Revenue will also be at liberty to cross-examine the Scientist of ARBRO Pharmaceuticals Limited and the Scientist of the Laboratory where the re-test is done. Opinion of experts on the subject of food quality is also to be considered. In order to facilitate the same, we set aside the impugned order and remit the matter to the Commissioner for afresh adjudication. In view of the fact that clearance of a large consignment of food item is held up. It is further directed that re-adjudication be carried out with at most expedition and fresh order passed within a period preferably within six months from the receipt of a copy of this order.

4. As per the remand order the sample was sent for re-testing to CFL Ghaziabad and according to the report of CFL, the melting point of the oil was 42.5 degree centigrade. The Adjudicating Authority reiterated its order. The grouse of the appellant is that the appellant had requested the Commissioner to send a fresh sample for re-testing. However, the request of the appellant was not granted because of the above said remand order. The said order of the Commissioner had been complied with meaning thereby that, although, no fresh sample was sent, yet, the order of the Tribunal was complied with in toto. The Adjudicating Authority ordered confiscated of the vanaspati, imposed penalty and ordered destruction of confiscated goods. He, however, gave the following option to the applicant:

However, I give the importer an option to re-export the same subject to the condition that the aforesaid confiscated quantity Hydrogenated Vegetable Oil (Vanaspati) shall be re-exported by the importer within 30 day of this order.

5. Aggrieved by the said order the applicant preferred an appeal before the Tribunal. The Tribunal passed the following order-

In view of the above decision of the Supreme Court, we find no infirmity in the impugned order wherein the goods were confiscated on the ground that these are adulterated. However, taking into accounts the facts and circumstances, as the appellant imported goods from Sri Lanka the test report supplied by the exporter shows the melting point being 40 degree centigrade. Hence the appellants are not liable for any penalty, the penalty is set aside. Otherwise, the

impugned order is upheld.

6. The appellant has listed the following grounds:

Since the reports of CFL Ghaziabad and M/s. ARBRO Pharmaceuticals Ltd. are in conflicting state, Therefore, third opinion should have been sought. It was the duty of the Commissioner to send the remaining sample for re-testing as per law laid down in 1997 (96) ELT 599 1994 (74) ELT 392 and Commissioner of Customs v. Punjab Stainless Steel (5) 2001 A.C. 622 (SC) . The learned Counsel for the appellant vehemently argued that the Court should order that there should be another re-testing of the vanaspati. It was argued that the Court should order to redraw a fresh sample and send it for fresh test. Again, marginal difference of 1.5 does not fall into the category of specific melting point? as provided under the PFA Act, 1954 and, Therefore, it could not be termed as adulterated and found unfit for human consumption u/s 2(1)(A) of the PFA Act. While as per the CODEX standard, approved world wide and the basis of the PFA Acts and rules permit the melting point to 44 degree centigrade.

7. It was also pointed out that Ms. Vipin Gujral, Senior Analyst, in CFL Ghaziabad failed to give any opinion on the ground that she was not competent to give opinion on the question that variation in melting point can take place in case of vegetable products due to natural causes climate condition or human factors like adulterated.

8. During the arguments the learned Counsel for the appellant made alternative submission that the appellant should be allowed to import, to process, to make it fit for human consumption. The last submission made by the learned Counsel was that the appellant should be allowed to use the oil for industrial purposes.

9. The arguments urged by the learned Counsel for the appellant are feckless and feeble. It boggles one's mind as to how many opportunities should be granted to the appellant to get the vanaspati re-tested. The order of the Commissioner dated 13-7-2005 was fully complied with by the learned Commissioner. The second report sent by CFL Ghaziabad adds steel to the case of the department. It is not in dispute that the sample was sent to M/s. ARBRO Pharmaceuticals Ltd. by the appellant of its own accord. It cannot however be said for sure that what was sent to M/s. ARBRO Pharmaceuticals Ltd. indeed a sample taken out of the oil in question. Moreover, the said sample was sent at the instance of the appellant himself. The Court takes a dim view of such like evidence. The second report sent by CFL goes to invigorate the case of the department. We see no reason to discard the same. The Commissioner sent the remnants of the sample for re-testing as per order given by the Tribunal. If the appellant had any doubt regarding the same, it did not make any attempt to get the said fact clarified. It should have requested the Tribunal that he should order that a fresh sample should be sent for re-testing. This new point is raised after the second report was filed by CFL Ghaziabad. The appellant's argument is without dimensions. Under these circumstances the question of redrawing

sample afresh and sending it for re-test does not arises.

10. Now, we turn to the request of the appellant that it should be permitted to make the vanaspati fit for human consumption. No such request was made before the Commissioner or Tribunal. The new plea cannot be entertained at this late stage.

11. The next question raised by him was that the appellant should be permitted to use it for industrial purposes. This request is vulnerable to refutation for twin reasons. To top it all, this request was never made before the lower authorities. Secondly, even if this request is granted, what is the guarantee that the appellant will not use it for human consumption. Actually, every fact militated against his argument.

12. Adulteration of food is a menace to public health. The prevention of food adulteration is meant to save society and Parliament has by repeated enactments emphasised the statutory determination to stamp out food offences by sever punishments. The aim of law is to eradicate this anti-social evil and to ensure purity of food. The paramount need is the protection of the society. There is no legal bar to avarice but we are loath to encourage it in the Court. The learned Commissioner has relied upon an authority by the Apex Court in *Dineshchandra Jamnadas Gandhi Vs. State of Gujarat and Another*, which neatly dovetails with the facts of this case. It was authoritatively laid down,

The object and purpose of Prevention of Food Adulteration Act" are to eliminate the danger to human life from the sale of unwholesome articles of food. The legislation is on Adulteration of Food Stuffs and other Goods (Entry 18 List iii Seventh Schedule). It is enacted to curb the widespread evil of food adulteration and is a legislative measure for social defense. It is intended to suppress a social and economic mischief - an evil which attempts to poison, for monetary gains, the very sources of sustenance of life and the well being of the community. The evil of adulteration of food and its effects on the health of the community are assuming alarming propositions. The offence of adulteration is a socio-economic offence.

13. In the result, we find that the appeal filed by the appellant is meritless and the same is, Therefore, dismissed. However, nothing will debar the appellant to make a prayer to the Adjudicating Authority to give it an option to re-export the same subject to the conditions to be imposed by the learned Adjudicating Authority. There shall be no order as to costs. File be consigned to Record Room.