

(2011) 04 AP CK 0004

In the Andhra Pradesh High Court

Case No : Central Excise Appeal No. 87 of 2011

Virat Crane Agri-Tech Ltd.

APPELLANT

Vs

Commissioner of Cus. and C. Ex., Guntur

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Central Excise Rules, 2002 — Rule 21

Central Excises and Salt Act, 1944 — Section 35B, 35G

Citation : (2011) 271 ELT 510

Hon'ble Judges : V.V.S. Rao, J; Ramesh Ranganathan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal by the assessee u/s 35G of the Central Excise Act, 1944 (the Act) is against the final order dated 7-9-2010 of the 2010 (259) ELT 741

2. The appellant - an incorporated company - is a 100% EOU manufacturing fruit pulp/concentrate classifiable under Chapter sub-heading 2001.10 of the Central Excise Tariff Act, 1985. They had their factory at Berhampur, Orissa. The finished goods were packed in bags and kept in steel drums/barrels for export. As they faced marketing difficulties, they shifted the factory to Vengalayapalem village to the jurisdiction of the Commissioner of Customs and Excise, Central Excise, Guntur. During June-July, 2003 the appellant received 737 drums/barrels of finished goods from their Berhampur warehouse. Out of these, 566 drums of finished goods became unfit for human consumption. They requested the Divisional Officer on 8-7-2003 for permission to destroy the spoiled goods. They also submitted an analytical report to that effect. Subsequently they sought for permission for destruction of 737 drums valued at Rs. 55,90,844/-. In Aprils 2004 they received 198 more drums from Berhampur warehouse. They statedly addressed letters to the Commissioner informing that they are going to destroy the spoiled goods in their premises. The Superintendent of Customs and Central Excise advised them not to undertake destruction till further orders since the

matter is being referred to the Commissioner. But, by subsequent communication dated 13-8-2004, the appellant informed that they had destroyed damaged goods in 935 drums valued at Rs. 72,44,934/- including 198 drums received subsequent to their request for permission.

3. The Commissioner initiated proceedings for recovery of duty, education cess, interest and penalty. After necessary procedural compliance, the Commissioner, Guntur passed Order-In-Original (O-I-O) on 13-1-2006 directing the appellant to pay the amount demanded in the show cause notice. Aggrieved by the O-I-O, the appellant preferred an appeal to the Commissioner of Central Excise (Appeals). By order dated 1-8-2007, the appeal was partly allowed setting aside the demand of duty for 737 drums as the appellant had intimated the department well in advance, and they had failed to intimate destruction-of 198 more drums received subsequently. Further appeal u/s 35B of the Act to the CESTAT by the appellant was unsuccessful.

4. The Counsel for the petitioner would submit that the appellant intimated about spoiled goods in 737 drums well in advance and, as the department delayed inspection, the appellant had to destroy the same along with 198 more drums received subsequently because of the objection of the villagers regarding sanitation problems. According to the Counsel, the intimation given to the department, after destroying all the drums, is sufficient to support the bona fide claim of the appellant. He placed reliance on Rule 21 of the Central Excise Rules, 2002 (the Rules) in support of the claim for remission of duty.

5. There is no dispute that, after receiving drums of pulp from the Berhampur warehouse, the appellant informed the Divisional Officer and sought permission to destroy 566 spoiled goods. This request was subsequently enhanced to 737 drums. The same was being processed by the department. Indeed, as seen from the O-I-O, the Superintendent of Customs and Central Excise, Range-I, by letter OC No. 104/2004 dated 25-2-2004, informed the appellant not to undertake destruction till further orders. In the meanwhile the appellant received 198 more drums about which no intimation was given. Furthermore, even before the department could consider the analytical report submitted by the appellant in respect of 566 drums, all the drums numbering 935 (including 198 received subsequently) were destroyed. No permission was ever given by the department.

6. Rule 21 of the Rules reads as under.

21. Remission of duty. -- Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing :

Provided that where such duty does not exceed ten thousand rupees, the provisions of this rule shall have effect as if for the expression "Commissioner",

the expression "Superintendent of Central Excise" has been substituted :

Provided further that where such duty exceeds ten thousand rupees but does not exceed one lakh rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be," has been substituted :

Provided also that where such "duty exceeds [one lakh rupees but does not exceed five lakh rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Joint Commissioner of Central Excise or Additional Commissioner of Central Excise, as the case may be," has been substituted.

7. On paraphrasing the above Rule, it becomes clear that the Commissioner may remit the duty payable on the goods if they are lost or destroyed by natural causes or by unavoidable accident or claimed by the assessee as unfit for consumption or for marketing. In this case, the plea of the appellant is that the pulp manufactured at Berhampur, and transmitted to Vengalayapalem, became unfit for human consumption. Unless it is shown by the assessee to the satisfaction of the Commissioner that it is indeed unfit they cannot be destroyed. The Rule has to be interpreted strictly. The Commissioner can arrive at his satisfaction only when necessary evidence is produced by the assessee. Admittedly the analytical report covers 566 drums and there was no such analytical report for the other drums including 198 drums. It appears the adjudicating as well as appellate Commissioners let off the appellant in respect of 737 drums for which intimation was given. In so far as 198 drums were concerned, the appellate Commissioner as well as CESTAT came to the correct conclusion after appreciating the factual background. This appeal, therefore, does not involve any substantial question of law.

8. The appeal is misconceived and is accordingly dismissed.