

CASE NO.:

Appeal (civil) 7769 of 2001

Appeal (civil) 8460-8483 of 2001

PETITIONER:

THE COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH-II, CHANDIGARH.

Vs.

RESPONDENT:

COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH-I, CHANDIGARH.

DATE OF JUDGMENT: 15/03/2002

BENCH:

M.B. Shah & B.N. Agrawal

JUDGMENT:

Shah, J.

The Commissioner of Central Excise, Chandigarh has challenged the order dated 8th May 2000 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short referred to as "CEGAT") in Appeal No.E/3084/99-D etc., by which the Tribunal dismissed the appeals preferred by the revenue involving the common question whether the respondents were engaged in the manufacturing/propagation of yeast leviable to central excise duty. Hence, these appeals.

Therefore, the short question involved in these appeals is whether the 'yeast' propagated by the respondents having self-life of 6-8 hours which can be preserved in containers was excisable to the customs duty under description of heading 21.02 of the Central Excise Tariff Act. The Tariff Heading 21.02 reads thus: -

Heading Sub- No.	Description of Goods Heading No.	Rate of	Duty
21.02	Yeasts (active or inactive); other single-cell micro-organisms, dead (but not including vaccines of Chapter 30); prepared baking powders		
2102.10	Put up in unit containers and ordinarily intended for sale	10%	
2102.90	Other.	10%	

Learned counsel for the appellant submitted that the order passed by the CEGAT is on the face of it illegal in view of the aforesaid specific Item No.21.02 which makes yeast as excisable. He submits that the CEGAT has arrived at the conclusion that its life is for 6-8 hours and there is no reason to hold that it is not marketed or

marketable.

As against this, learned counsel appearing on behalf of the respondents submitted that the contention raised by the counsel for the appellant is totally beside the point as it was never contended by the respondents before the CEGAT that yeast is not excisable. What was contended before the CEGAT was that respondents were not manufacturing yeast. On the contrary, they were purchasing yeast from the market and propagating the same for manufacture of potable liquor.

In our view, it would be misreading the order passed by the CEGAT to hold that it has arrived at the conclusion that yeast is not excisable. The CEGAT has held that the process adopted by the respondents of purchasing the yeast from the market which is excisable and mixing it with molasses and water for propagating the same cannot be held to be manufacture of yeast, as such liquid in mixture form is not marketable. In the present case, in the show cause notice issued by the Assistant Commissioner the process adopted by the respondents is mentioned which makes the position clear. It is stated in the show cause notice that party is engaged in manufacture/propagation of yeast for captive consumption in manufacture of potable Ethyl Alcohol. For that purpose, two processes are adopted by the party. Firstly, respondents purchase fresh yeast of 500 grams packets from the agents of yeast manufacturing Company. They mix 10 kilograms of fresh yeast with molasses purchased from the market which is diluted in water in a tank capacity of 10,000 litres, where it is propagated for 13 hours. The said mixture is called 'BUB' as defined in the Punjab Distillery Rules, 1932. The said BUB is shifted to fermentation vessel. After fermentation, it is called 'WASH' as defined in the Distillery Rules. Similarly, the party also purchases yeast culture procured from the National Chemical Laboratory, Pune. First molasses are taken in a small flask of 50 ml. and a pinch of yeast from slant or brought out yeast is added with the help of Platinum wire. The mixture so obtained is kept in a particular temperature in BOD incubator for about 21 hours. Thereafter, the said mixture is later transferred into another flask of 250 ml. wherein molasses and water is already stored. The process continues and thereafter the mixture is finally kept in a vessel having capacity of 100000 litres. It is also known as 'BUB' vat placed in the fermentation Hall. The mixture is permitted to ferment. This fermented mixture is used for manufacture of potable alcohol and, therefore, this intermediate product of molasses and yeast is excisable.

On the basis of the show cause notice, the Assistant Commissioner after hearing the parties arrived at the conclusion that the manufacturing process of 'WASH' as given in the show cause notice would be covered within the category of active yeast as it is produced from culture yeast or seed yeast purchased from laboratory or market. The product 'WASH' would be covered within the category of Baker's yeast. That order was set aside by the Commissioner (Appeals) by holding that the goods in question were having a very short self-life; there was no evidence to prove that such goods were either marketed or were marketable. That finding is upheld by the CEGAT.

As stated above, in the appeals before the CEGAT, there was no dispute that 'yeast' itself is exigible to duty, but what was contended before the Tribunal was limited to the so-called product of yeast obtained by propagating the same by mixing it with molasses and water for manufacture of potable alcohol. Hence, in our view, the finding given by the CEGAT cannot be held to be, in any way, illegal or erroneous because it has not been proved that such intermediate product is marketed or marketable. For this purpose, the CEGAT has

rightly relied upon the decision of this Court in Union of India v. Delhi Cloth and General Mills Co. Ltd. [(1997) 5 SCC 767]. The CEGAT has also relied upon the decision in Collector of Central Excise, Baroda v. M/s Ambalal Sarabhai Enterprises (P) Ltd. [(1989) 4 SCC 112] for holding that in such cases the burden is on the Department to prove that such goods were either marketed or were marketable. Further, this Court in Collector of Central Excise, Baroda v. United Phosphorus Ltd. [(2000) 4 SCC 18] observed that though the intermediate goods so coming into existence may be specified in the Schedule as excisable, they would not be subjected to duty unless they satisfy the test of marketability.

Hence, there is no substance in these appeals and are dismissed, with no order as to costs.

..J.
(M.B. SHAH)

J.
(B.N. AGRAWAL)

March 15, 2002.