

CASE NO.:
Appeal (civil) 2523-2529 of 2000

PETITIONER:
M/s Vinay Solvent Extraction Industries Pvt. Ltd.

RESPONDENT:
Commissioner of Central Excise, Gujarat

DATE OF JUDGMENT: 20/04/2005

BENCH:
S. N. Variava, Dr. AR. Lakshmanan & S. H. Kapadia

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

These Appeals are filed against an Order dated 18th November, 1999 of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT).

Briefly stated the facts are as follows.

On 26th of July 1988 one Vijay Oil Mill having its address at Majevasi Gate, Junagadh, addressed a letter to the Superintendent of Central Excise, Junagadh, wherein it was mentioned that they had entered into a lease agreement with the Appellants. It was mentioned that Vijay Oil Mill was supplying oil cakes to the factory of the Appellants and that the Appellants, who are holding a valid Central Excise Licence, would be undertaking manufacturing activities for and on their behalf, i.e., on behalf of Vijay Oil Mill. The letter mentioned that the Vijay Oil Mill was accordingly filing a declaration under Notification No. 305/77 dated 5th November 1977. By the letter Vijay Oil Mill applied for exemption from licencing control and for permitting the Appellants to discharge all the excise liabilities and procedural formalities on their behalf.

The declaration filed along with the letter is relevant and it reads as follows:-

"FORM OF AUTHORISATION TO BE FILLED IN BY A
MANUFACTURER WHO GETS HIS GOODS
MANUFACTURED/FABRICATED FROM ANY OTHER PERSON
AND TO BE AGREED TO BY THE LATTER

From: VIJAY OIL MILL
Full Address: Outside Majevasi,
Gate, JUNAGADH-362001

Phone No. if any: 25347/25397

To,
The Superintendent of Central Excise,
Range JUNAGADH Division \026 Junagadh

A U T H O R I S A T I O N

I/We, Vijay Oil Mill, Outside Majevasi Gate, Junagadh hereby authorize M/s. Vinay Solvent Extraction Industries Private Limited of Sukhpur, Junagadh (holding Central Excise licence in form L.4 No. JUN/VNEO/2/80 to manufacture/fabricate on my/our behalf Refined Oil (Excisable commodity) falling under Central Excise Tariff Item No. 1503.10 and to comply on my/our behalf all the procedural formalities under the Central Excises & Salt Act, 1944 and Rules made thereunder and also to furnish

information relating to the price at which I/we sell the said goods (excisable commodity) including complete information in case of goods sold to or through related persons in order to enable determination of value of the said goods under section 4 of the said Act.

PLACE: JUNAGADH

DATE:

(Signature)

Manufacturer who gets his goods manufactured from any other person or his authorized Agent.

I/We VINAY SOLVENT EXTRACTION INDUSTRIES PRIVATE LIMITED of Sukhpur (JUNAGADH) holding Central Excise licence in form L-4 No. JUN/VENO/2/80 at SUKHPUR hereby accept the above authorization and agree to discharge all liabilities under the Central Excises and Salt Act, 1944 and Rules made thereunder in respect of the said goods manufactured from time to time by me/us on behalf of the above mentioned manufacturer.

PLACE: Sukhpur

DATE:

(Signature)

Actual Manufacturer or his Authorised Agent."

(emphasis supplied)

It is thus to be seen that the letter and the declaration are under Notification No. 305/77. This Notification permits a manufacturer, who gets his goods manufactured from some other person, to authorize that other persons i.e. the person who actually manufactures the goods, to comply with the procedural formalities and discharge liabilities under the Central Excises and Salt Act 1944. The declaration set out hereinabove clearly indicates that the Appellants were the manufacturers. The Appellants have accepted the authorization. They thus acknowledge that they are the actual manufacturer.

It must be mentioned that the parties also entered into a Lease Agreement which inter alia contained the following clauses:-

"1. Any type of oil cakes of your purchase and production will be treated at the rate of Rs.500.00 per one Metric Ton of 1000 Kgs.

2. The rates including the unloading of raw materials and the loading of the finished goods at our costs.

3. You have to pay minimum charge if you are not able to give us the sufficient raw materials to meet outstanding expenses whatsoever accrued during the year \026 on per year ending financial year.

4. Oils, other than solvent extracted oils, will be charge for refining at Rs.700.00 per metric ton of oil."

This Lease Agreement also indicates that the Appellants have leased out the factory to Vijay Oil Mill, who would supply the oil cakes to the Appellants and the Appellants would produce at the rate of Rs.500/- per metric ton of 1000 Kgs. (if the oil was a solvent extracted oil) and at the rate of Rs.700/- per metric ton (for other oils). The rates include unloading of raw material and loading of finished goods at the cost of the Appellants. Vijay Oil Mills was to pay a minimum

charge, which was to meet all standing expenses.

The Appellants filed a classification list classifying the product manufactured by them under Tariff Sub-Heading 1503.10 of the Schedule to the Central Excise Tariff Act 1985. In the classification list the Appellants claimed benefit of Notification No. 262/86-C.E. dated 24th April 1986.

Seven show-cause notices were issued to the Appellants on the ground that they were not entitled to the benefit of the said Notification as they had not produced certificates as required under clause (iii) of the said Notification. The Appellants then produced certificates from the Directorate of Vanaspati, Vegetable Oils and Fats to the effect that vegetable oil manufactured by "Vijay Oil Mill" had been manufactured from fixed vegetable oil extracted by solvent method. The Assistant Collector of Central Excise dropped the show-cause notices on the production of the said certificates. He, however, imposed a penalty of Rs. 2,000/- for non-filing of declaration under Notification No. 305/77-CE dated 5th November 1977.

Against the dropping of the proceedings, the Department filed an Appeal to the Collector (Appeals). The Collector (Appeals) held that the Appellants were not eligible for the exemption under Notification No. 262/86-CE dated 24th April 1986.

Against this Order the Appellants filed an Appeal to the Tribunal. There was a difference of opinion between the Technical Member and the Judicial Member. The Judicial Member held that the Appellants were not entitled to the benefit of the Notification. The Technical Member held that the Appellants were entitled to the benefit of the Notification. Because of the difference of opinion the matter was referred to a third Member who agreed with the view of the Judicial Member and held that the Appellants were not entitled to the benefit of the said Notification. Accordingly, by virtue of the majority opinion, the Tribunal dismissed the Appeal and confirmed the demands. Hence these Appeals.

The question before this Court is whether the Appellants are entitled to benefit of Notification No. 262/86-CE dated 24th April, 1986. Before this question is considered, for sake of clarity, facts need to be recapitulated briefly. As set out above, Vijay Oil Mills had filed a declaration, which had been accepted by the Appellants, that the Appellants were the actual manufacturers. The Department had accepted this case. The Central Excise licence was held by the Appellants. The Appellants were the assessee who filed the classification list (as manufacturers) and claimed the benefit of the Notification (as manufacturers).

It now becomes necessary to consider the Notification. It reads as follows:-

"In exercise of the Powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts fixed vegetable oils falling under sub-heading No.1503.10 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the said processed fixed vegetable oils) from the whole of the duty of excise leviable thereon which is specified in the said Schedule, subject to the following conditions, namely:-

(i) the said processed fixed vegetable oil has been manufactured from fixed vegetable oils extracted by the solvent extraction method;

(ii) the manufacturer shall maintain record regarding manufacture of the said processed fixed vegetable oils and their clearance in the manner specified by the Assistant Collector of Central Excise;

(iii) the manufacturer shall within such period as the Assistant Collector of Central Excise may allow in

this behalf produce a certificate from an officer not below the rank of a Deputy Director in the Directorate of Vanaspathi, Vegetable Oils and Fats to the effect that the said processed fixed Vegetable oils have been manufactured from fixed vegetable oils extracted by the solvent extraction method; and

(iv) the manufacturer undertakes to pay on demand in respect of such quantity of the said processed fixed vegetable oils as is not proved to the satisfaction of the Assistant Collector of Central Excise to have been manufactured from fixed vegetable oils extracted by solvent extraction method an amount equal to the duty of excise leviable thereon but for the exemption contained herein."

A plain reading of this Notification shows that the exemption is to the fixed vegetable oils falling under sub-heading 1503.10, provided (a) it has been manufactured from fixed vegetable oils extracted by the solvent extraction method; (b) the manufacturer maintains record regarding manufacture of the said processed fixed vegetable oils and their clearance and (c) the manufacturer produces a certificate from an officer not below the rank of a Deputy Director in the Directorate of Vanaspathi, Vegetable Oils and Fats to the effect that the said processed fixed vegetable oils have been manufactured from fixed vegetable oils extracted by the solvent extraction method. As seen above the Appellants are the manufacturers. They are maintaining the record and clearing the goods. Under condition No. (iii), it is the Appellants who have to produce the required certificate. The certificate must necessarily show that the processed fixed vegetable oils manufactured by the Appellants was manufactured from fixed vegetable oils extracted by the solvent extraction method. To get such a certificate the Appellants would have to be registered with the Directorate of Vansapati, Vegetable Oils and Fats, which admittedly the Appellants are not. Realizing that this condition could not be fulfilled by them the Appellants produced certificates certifying that Vijay Oil Mills had manufactured such oil. As the Appellants are manufacturers such a certificate was of no help. Thus before all the lower authorities including the Tribunal it was contended that Vijay Oil Mills were the manufacturers. This was a case contrary to facts and the authorization and declaration. This contention was not accepted by the Collector who rightly held that Vijay Oil Mills were getting the manufacturing done by engaging the Appellants as job workers.

It must be mentioned that even in the Appeal Memo it has been contended that Vijay Oil Mills are the manufacturers. Initially Mr. Lakshmikumaran argued on the footing that Vijay Oil Mills were the manufacturers. However, when the correct facts were noted, with this usual fairness, Mr. Lakshmikumaran admitted that the record depicted that Vijay Oil Mills were not the manufacturers.

Mr. Lakshmikumaran has submitted that Condition No. (iii) only requires a manufacturer, i.e. the Appellants, to produce a certificate to the effect that the processed vegetable oil had been manufactured from fixed vegetable oils extracted by the solvent extraction method. He submitted that such certificates were produced by the Appellants. He submitted that the Appellants were not disentitled merely because the certificates mentioned that the fixed vegetable oils were manufactured by Vijay Oil Mills. We see no substance in this submission. The required certificate must necessarily show that the oil manufactured by the manufacturer (in this case the Appellants) had been manufactured from fixed vegetable oils extracted by the solvent extraction method. The manufacturer producing a certificate that some other party had manufactured processed oil from fixed vegetable oils extracted by solvent extraction method is obviously not sufficient.

Faced with this situation Mr. Lakshmikumaran submitted that the Tribunal has given a categorical finding to the following effect: "..... In the instant case, it is nobody's contention that Vinay Oil hired Vijay Oil to manufacture on the former's account. On the contrary, the entire factory was leased to Vijay Oil by an agreement which is on principal to principal basis. Except for receiving the lease fees, there is no other flow back of profits etc. to Vinay Oil shown before me. Therefore clearly, from the date of the lease, Vinay Oil ceases to be the manufacturer and Vijay Oil becomes the manufacturer under law. The undertaking given to ACCE that Vinay Oil would undertake to follow all excise procedures was misplaced in law as there is no legal provision shown to me to prescribe this. Hence, it has no value under this Act etc."

He submitted that on this categorical finding the benefit of the Notification could not have been denied. He submitted that in view of this finding the majority opinion to the effect that the benefit of the Notification was not available is required to be set aside.

On the other hand Mr. Doabia pointed out that confusion has been purposely created by the Appellants. He submitted that the case sought to be built up was contrary to the documents on record. He submitted that the actual manufacturers were the Appellants. He submitted that as they were the actual manufacturers a Certificate in the name of Vijay Oil Mills would not entitle the Appellants to get the benefit of the Notification.

We have considered the rival submissions. It is clear that benefit of Notification No. 305/77-CE dated 5.11.1977 has been taken; the authorization and declaration given as the Appellants are manufacturing on job work basis for Vijay Oil Mill. Thus, the actual manufacturer is the Appellant. It is the Appellant who filed the classification list and cleared the goods. It was only in reply to the show-cause notice that a contrary case was put up and confusion sought to be created. If the Appellants are actual manufacturers they can only get benefit of the Notification provided they have certificates from the Deputy Director of Vanaspati, Vegetable Oils and Fats showing that the vegetable oil produced by them has been manufactured from fixed vegetable oils extracted by the solvent extraction method. The Appellants do not have any such certificates. Certificates showing that Vijay Oil Mills have processed fixed vegetable oils are not sufficient. The Appellants were aware of this position. They thus contented that it was Vijay Oil Mill who manufactured the processed oil. Such a contention is rightly not accepted by the Collector and even by the Judicial Member. Undoubtedly, the third Member of the Tribunal appears to have accepted this case. However, it has been correctly held that Vijay Oil Mills would not be entitled to the benefit of the Notification as they do not have a licence under the Central Excise Act and do not comply with any of the formalities under the Central Excise Act. More importantly they are not paying any excise duty. A party who admittedly is not paying excise duty cannot claim exemption from duty.

Mr. Lakshmikumaran then submitted that as the facts were confusing the matter should be remanded back to the Assessing Officer so that correct facts could be ascertained. We are unable to accept this submission. The Appellants have accepted the authorization. They have shown themselves to be manufacturers. The Appellants are complying with the formalities under the Central Excise Act. The Appellants maintain the requisite records. The Appellants clear the goods. Condition No.(ii) of the Notification has been

complied with by the Appellants and not by Vijay Oil Mill. It is the Appellants who had filed the classification list. It is the Appellants who had claimed the benefit of the said Notification. It can hardly now lie in the mouth of the Appellants to claim that Vijay Oil Mills were the real manufacturers. Further, as stated above, even if Vijay Oil Mills were the manufacturer they would not be entitled to the benefit of the Notification as they hold no licence nor comply with formalities under the Central Excise Act. They do not even pay excise duty. Thus no question arises of Vijay Oil Mills claiming benefit of the said Notification.

In this view of the matter, we see no reason to interfere. The Appeals stand dismissed. There will, however, be no order as to costs.

JUDIS