CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 585 of 2009

[Arising out of Order-in-Original No. 04-2009 dated 23/03/2009 passed by CCE&C, Belgaum]

RIDDHI SIDDHI GLUCO BIOLS LTD
UNIT-II, GOKAK FALLS ROAD, GOKAK

Appellant(s)

VERSUS

C.C.,C.E.& S.T-BELGAUM
NO. 71...CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM,
KARNATAKA
590001

Respondent(s)

Appearance:

Ms. Rukmini Menon, Advocate — For the Appellant

Ms. C.V. Savitha, Superintendent(AR) — For the Respondent

CORAM: HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Date of Hearing: 10/02/2020
Date of Decision:17/02/2020

Final Order No. 20190 /2020

Per : S.S GARG

The present appeal is directed against the impugned order dt. 23/03/2009 passed by the Commissioner of Central Excise and Customs, Belgaum whereby the Commissioner has classified Maize Starch Powder (MSP, for short) (Thin boiled starch), MSP (very thin boiled starch), MSP Regular (Pharma), MSP Regular (Textiles) and MSP Regular (Food) manufactured and cleared by the appellant during the period from December 2007 to May 2008 under Tariff heading No.35051090 of the Central Excise Tariff, 1985 and confirmed the duty demand amounting to Rs.1,10,96,148/- and also imposed penalty of Rs.10 lakhs under Rule 25 of the Central Excise Rules, 2002.

2. Briefly the facts of the present case are that the appellant are engaged in the manufacture and clearance of Maize Starch Powder (MSP for short) and other excisable products like Liquid Glucose, Dextrose Manohydrate, Malto Dextrine, Hydrol, Maize Germ, Corn Steep Liquid, Maize Gluten. Out of these products, the different varieties of Maize Starch Powder are classified under Chapter Sub-Heading No.11081200 of the First Schedule to the Central Excise Tariff Act, 1985 and cleared without payment of duty by claiming the exemption under Notification No.3/2007-C.E. dated 01/03/2007 for the period from December-2007 to May-2008.

2.1. The manufacturing process of different varieties of MSP being manufactured by the assessee are as under:

Manufacturing process of Maize Starch Slurry:

The basis raw material maize is cleaned and taken for steeping in the vats, steeping is done at 50 degree centigrade with water having Sulphur Dioxide concentration of 0.2% and for a period of 60 hours. The soluble protein minerals in the maize get absorbed in steeping water, which is further evaporated to get Corn Steep Liquor (CSL) and the CSL is sold to fermentation industries. The steeped maize having moisture around 40% is wet milled / grinded in three stages. In the first two stages, Germ is separated and it is dried and packed and supplied to Oil extraction industries. In the third stage it is further processed for fibre separation, by washing in DSM screens. The resultant slurry contains Gluten and Starch, which is fed to Merco Centrifuge, called Primary Separator. The overflow of the primary separator contains Gluten of 7 to 8 grams per litre which is further processed in Merco Centrifuge called Gluten Thickener to get Gluten concentration to the order of 100 to 200 grams per litre, which is further filtered to get Gluten Cake and the cake is dried and packed and supplied to poultry and cattle feed industries. In the primary Merco Centrifuge remaining starch slurry still contains some percentage of Gluten. This again is processed in Hydro Cyclone Wash System to remove the remaining Gluten. The resultant product so obtained is called as Starch Slurry.

MSP Regular:

The MSP-Regular is manufactured by way of centrifuging the aforesaid Starch Slurry to remove water and drying it to get powder and packed in 50 kg bags.

MST-Thin Boiled Starch (TBS)

The manufacturing process upto the production of 'Starch Slurry' is same as detailed above at para 2.1. For manufacture of MSP-Thin Boiled Starch, 15 M3 of starch slurry is mixed with 120 litres of Hydrochloric Acid and retained for 60 minutes. Thereafter, 60 kgs of Soda Ash dissolved in water of 500 litres is added to neutralize the slurry mixture. This process yields 5 MTs of MSP-TBS.

MSP-Very Thin Boiled Starch (VTBS):

The manufacturing process upto the production of 'Starch Slurry' is same as detailed above at para 2.1. For manufacture of VBTS, 15M3 of starch slurry is mixed with 120 litres of Hydrochloric Acid and retained for 180 minutes. Thereafter, 60 kgs of Soda Ash dissolved in water of 500 litres is added to neutralize the slurry mixture. This process yields 5 MTs of MSP-VTBS.

MSP-Regular Pharma:

The manufacturing process upto the production of 'Starch Slurry' is same as detailed above at para 2.1. For manufacture of MSP-Regular Pharma, 200 grams of Potassium Permanganate, 2 kg of Sodium Metabisulphite and 500 ml of Sodium Hypochlorite are added to 15M3 of Starch Slurry and kept for 30 minutes. This process yields 5 MTs of MSP Pharma grade.

MSP-Regular Food:

The manufacturing process up to the production of 'Starch Slurry' is same as detailed above at para 2.1. For manufacture of MSP-Regular Food, 200 grams of Potassium Permanganate and 2 kg of Sodium Meta bisulphate are added to 15 M3 of Starch Slurry and kept for 30 minutes. This process yields 5 MTs of MSP Food grade.

2.3. The different varieties of MSP manufactured by the assessee appeared to have been marketed to the following class of buyers, as per invoices: A) Food Industry, b) Pharma Industry, c) Textile Industry and d) Paper Industry

2.4. As per the opinion of the Chemical Examiner, Customs House, Chennai furnished vide letters F.No.L.CX.II/S/732/2001)LAB No.71/75/2001) dated 27.06.2001 and 30.04.2002, it appeared that MSP Regular Starch Manufactured and cleared by the assessee which is not processed/modified alone is classifiable under Chapter Sub-Heading No.11081200 of the first schedule to the Central Excise Tariff Act, 1985 and the remaining products viz., MSP (Thin Boiled Starch), MSP (Very Thin Boiled Starch), MSP (Pharma) and MSP (Food) are modified starches.

2.5. Chapter heading 3505 of Central Excise Tariff Act, 1985 reads as under:

> "Dextrines and other modified starches (for example, pregelatinised or esterfied starches): glues based on starches, or on dextrines or other modified starches".

The Dextrines and other modified starches covered under the said heading include products obtained by the transformation of starches through the action of heat, chemicals or diastase, and starch modified.

2.6. After subjecting to processes as above to suit the requirement of particular industry, the starch becomes modified starch and classifiable under Chapter sub heading 35051090 of the first Schedule to the CETA, 1985. This sub heading covers all types of processed / modified starches which are used in industries including textile, paper or the like.

2.7. The Department entertained the view that appellant has contravened Rule 4 and Rule 6 of CER, 2002. Appellant was issued a show-cause notice dt. 17/12/2008. Appellant filed detailed reply to the show-cause notice and after considering the submissions of both the parties, the Commissioner has confirmed the demand.

3. Heard both sides and perused the records.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. She further submitted that the issue involved in the present case is no more res integra and has been settled in the appellant's own case by various decisions of the Tribunal. She relied upon the following decisions:-

i. Riddhi Siddhi gluco Biols Ltd. Vs. CCE, Belgaum [2011(270) ELT 291 (Tri. Bang.)]
ii. Riddhi Siddhi gluco Biols Ltd. Vs. CCE, Belgaum [2015(323) ELT 184 (Tri. Bang.)]
iii. Riddhi Siddhi gluco Biols Ltd. Vs. CCE, Belgaum [2016 (335) ELT 761 (Tri. Del.)]

4.2. She further submitted that for the earlier period and the subsequent period, the issue has been settled in favour of the appellant in the appellant's own case which is reported in 2011(27)

ELT 291 (Tri. Bang.).

5. On the other hand, the learned AR submitted that the Tribunal's decision in the appellant's own case have been challenged by the Department before the Apex Court and the appeals are pending; but there is no stay in those appeals.

6. After considering the submissions by both the sides and perusal of the material on record, we find that the issue is squarely covered by a precedent decision of the Tribunal in the appellant's own case as reported in 2011(270) ELT 291 (Tri. Bang.) wherein it was held that the impugned order relying upon the report of the Departmental Chemical Examiner who had given his personal opinion without any empirical tests or study of manufacturing process cannot be sustained. It is pertinent to reproduce the findings recorded by the Tribunal in para 7.6 which reproduced herein below:-

> ***7.6*** *We find that native starch of Chapter Heading 11 and modified starch of Chapter Heading 3505 are different in its physical and chemical properties as reflected in the explanatory notes to HSN, the encyclopedia relied on and the expert opinions. As the Commissioner had relied on the opinion of the departmental expert, it was necessary that he also critically examined the expert opinions furnished by the assessee to support its case. It was open to the Commissioner to examine the experts before he arrived at a finding against the assessee and relying only on a similar opinion of the Chemical Examiner who also had not studied the actual process of manufacture followed by the assessee or determined the properties of the impugned goods by testing samples. In our considered opinion, the impugned order is not sustainable, for the reason that the important conclusion on the classification was solely based on the personal knowledge and opinion of a departmental expert not supported by empirical test of the relevant values/properties that would justify classification of the products in dispute under CH 3505 as modified starch. We note that the Commissioner held "that it is not necessary to allow any cross-examination of the so-called experts and authorities of*

> *the numerous institutions being referred to by the assessee". We hold that it was necessary and appropriate that the Commissioner examined experts himself before deciding the classification based on the opinion of the Chemical Examiner. Though the results of tests conducted by the Chemical Examiner could be preferred over results of such tests conducted by private agencies, personal opinion of the Chemical Examiner without studying the process of manufacture followed or carrying out chemical test as prescribed cannot form safe and reliable basis for deciding classification. In the circumstances, we find that the Commissioner's conclusions are not substantiated with evidence or proper reasoning. In these circumstances, we set aside the impugned orders and allow these appeals.*

7. Since the issue is clearly covered by the precedent decision in the appellant's own case and by following the ratio of the said decision, we allow the appeal of the appellant by setting aside the impugned order with consequential relief if any.

(Order was pronounced
in Open Court on **17/02/2020**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...