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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/1191/2010 - CU[DB], ST/S/2462/10 Date **07/04/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S AGRO DUTCH INDUSTRIES LTD.
VILL. TOFAPUR AND BAGWANPUR, DERABASSI,
MOHALI (PB)

M/S AGRO DUTCH INDUSTRIES LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/138/ 2011 CU|DB|** dated 01.04.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/193/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
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2. Adv. / Consult
MR.DSK LEGAL, ATTORNEY & SOLICITORS
A-62,ARADHANA .SECTOR-XIII, N DELHI.110066

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

BENCH-DB

Service Tax Stay Application No.ST/S/2462/2010-Cus.
in
Service Tax Appeal No.1191/2010-Cus.

[Arising out of Order-in-Appeal No.66/ST/Appl./CHD-II/2010 dated 13.05.2010 passed by Commissioner (Appeals), Central Excise, Chandigarh]

M/s. Agro Dutch Industries Ltd. ...Appellant

Vs.

CCE, Chandigarh ... Respondent

Present for the Appellant:Shri Rupender Singh, Advocate
Present for the Respondent:Shri K.K.Jaiswal, SDR

Coram:
Hon'ble Dr.Chittaranjan Satapathy,Technical Member
Hon'ble Mr.D.N.Panda, Judicial Member

Date of Hearing:21.03.2011

Date of decision: 21.03.2011

Stay order No.ST/193/11

Final **ORDER NO.** ST/138/11

PER: D.N. PANDA

The appellant came before Tribunal in appeal challenging the first appellate order upholding the adjudication order not exempting Goods Transport Agency Service (GTA) transporting canned vegetable from the levy of service tax. The denial was made holding that Notification No.33.04 dated 3.12.04 was not applicable to the appellant.

2. Appellant's claim before ld. Adjudicating authority was that it is governed by Notification No.33/04 dated 3.12.2004 to enjoy service tax exemption in respect of service provided by Goods Transport Agency in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage since canned mushroom is vegetable.

3. Appeal Record at page 35 reveals that when enquiry was conducted, one Shri Hardev Singh, Executive of the Appellant when examined u/s section 14 of Central Excise Act 1944 to find out the process undertaken by the Appellant to get canned mushroom, he stated that:

> *"On being asked about the manufacturing process, he stated that compost consisting of different ingredients i.e. cow dung, wheat straw, gypsum, chicken manure is duly mixed, thereafter water is added and the mixture is transferred to the bins where fermentation is done. Thereafter, the compost is shifted to the tunnels, where pasteurization takes place. After removing it from the tunnels, mushroom spawn, which is imported, is added and the mixture of compost in plastic bags is shifted to the growing area, where casing soil is added to it. The growth of the fresh mushrooms takes place in air-conditioned rooms where proper temperature is maintained. The fresh mushrooms are picked up. These are then transferred to the canning line for being canned. Before canning, the mushrooms are boiled at 90 to 100 degrees and brine and preservatives like ascorbic Acid, Citric Acid and salt is added to boiled mushrooms in the cans. The canned mushrooms are then shifted to the*

warehouse where they are packed, labelled and then exported......................................"

4. The plea of the appellant before the ld. Adjudicating Authority was that Chapter Note 1 of Chapter 4 brings edible mushroom to the category of "vegetables" and the canned mushrooms are "vegetables" for the purpose of enjoying exemption from payment of service tax by GTA in respect of transportation of the such vegetables. Without an explanation to the Notification to say vegetables means green vegetables and not processed vegetable, there is no basis to read the term vegetable as fresh vegetables. Such plea of the appellant was discarded by the ld. Adjudicating Authority examining the processes adopted by the appellant to get the output as canned mushrooms. He therefore denied the benefit of exemption claimed under Notification No.33/04 dated 3.12.2004. Decision of the learned Adjudicating Authority was found to be proper by the learned first Appellate Authority below.

5. Carrying the aforesaid dispute to Tribunal alongwith the appeal, the appellant made a stay application for stay of realisation of demand of service tax of Rs. 51,817/- followed by other consequences of law.

6. Ld. Counsel Shri Rupender Singh arguing on behalf of the appellant submitted that canned mushrooms are "vegetables" which entitles the Appellant to enjoy exemption in terms of the aforesaid Notification. He relied on the decision of the Larger

Bench made under Central Excise Law in the case of Premier Mushroom Farms vs. Commissioner of C. Ex., Hyderabad reported in 2005 (183) E.L.T. 252 (Tri.-LB). He prayed for stay of realisation of the demand following the earlier stay order granted in its own case reported in 2009 (14) S.T.R. 485 (Tri.- Del.).

7. Ld. DR on the other hand supporting the order of the authorities below submitted that the processed mushroom brings mushroom to a totally changed state for sale in different manner than the fresh plucked green vegetables. This is not the same vegetable as understood by common man in the market. Processing adds to quality, taste as well as durability to the life of the canned mushroom. According to him finding of the ld. Adjudicating Authority in para 14 brings out how processing brings mushroom to a different stage through the process of boiling, adding of preservatives, canning, labelling etc done. Mere nomenclature does not provide any assistance to the appellant to say that the canned mushroom is a vegetable. Thus exemption under Notification No.33/04 dated 3.12.01 is not applicable to transport of canned mushroom which is different from vegetable as normally understood.

8. Heard both sides and also perused the orders passed by the Authorities below. The first appellate order which upheld adjudication finding and reasoning has brought a difference between mushroom and canned mushroom holding the later not vegetable to enjoy exemption in terms of the aforesaid

notification. The Authorities below have neatly brought out what "canned mushroom" means and how that is different from mushroom. The statement recorded u/s 14 of the Central Excise Act, 1944 remained uncontroverted before us. The reasoning for the decision given by the Authorities below enabled us to decide the appeal itself on its merit without keeping the same pending. Accordingly we dispense pre-deposit and proceed to decide the appeal with the consent of both sides.

9. We have gone through the statement recorded and as extracted to the extent that is relevant for the decision as aforesaid. The word vegetable in taxing statute is to be understood as is understood in common parlance. Vegetable means green vegetable which are plucked and sold in the market without any processing done thereto. If the plucked vegetables undergo process, that brings a change to the vegetable itself to differentiate the same from what is understood in common parlance. Intention of the Notification to exempt GTA service from net of service tax seems to be to save fruits, vegetable, milk or eggs from decay or perishability, in transit by quick and accessible transportation on road so to make such commodities reachable to consumers before being spoiled and exemption to such transport service is granted.

10. "Vegetables" must be construed neither in a technical sense nor from the botanical point of view; it should be understood as in common parlance. A word which is not

defined in the Finance Act, 1994 but which is word of every day use must be construed in its popular sense. In common parlance fresh mushrooms are understood to be difference from canned mushrooms.

11. The vegetables grown in the garden or farm when undergo manufacturing process as recorded by Authorities below adds to its quality or durability, taste and fashion. Such vegetable go away from the scheme of exemption and no more enjoys the notificational benefit without being fresh vegetables and no more are green vegetable as commonly understood. This is possible to be construed from similar exemption given to fruits, eggs and milk. Once the people convergent in the trade do not understand a canned mushroom to be green vegetable, the common parlance theory disentitles the appellant to the exemption contemplated by the aforesaid Notification. The decision cited by learned counsel being on different statute which is not in *para materia* with Finance Act, 1994, that is not applicable.

12. The appellant manufacturer having undertaken the process of manufacturing to distinguish the canned vegetables from the green vegetable; it has put itself to a different situation not envisaged by the scheme of Notification. The processing done by the appellant having converted the fresh vegetable into processed vegetable, that brought the former into a different state other than that originally existed and the thing produced is by itself a commercially different commodity.

The commercially processed canned mushrooms do not enjoy the benefit scheme of exemption envisaged by the aforesaid Notification. Thus, denial of exemption benefit by both authorities below is proper for which the appeal is dismissed.

[Reasons of decision and the decision
pronounced in the open Court.]

(DR.CHITTARANJAN SATAPATHY)
TECHNICAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

Anita