

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 7325-7326 OF 2001

M/S COCO DRY FRUITS (INDIA) PVT.LTD.& ANR.

Appellant (s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE, DELHI

Respondent(s)

(With office report)

with CA.No.7242-7243/2002

(with appln.for ex-parte stay and with office report)

C.A.No.4549 of 2003

Date: 07/03/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner(s) Mr. Jaideep Gupta, Sr.Adv.

Mr. Rakesh U. Upadhyay, Adv.

Mr. Ramesh Jadhav, Adv.

Mr. Amit Kumar, Adv.

For Respondent(s) Mr. K. Radhakrishnan, Sr.Adv.

Mr. TA Khan, Adv.

Mr.Rupesh Kumar, Adv.

Mr. P.Parmeswaran, Adv.

UPON hearing counsel the Court made the following

O R D E R

It is submitted by the learned counsel appearing on behalf of the appellants

that there was no manufacture at all in the processing of roasting and salting the

cashewnuts and peanuts in question. It is further submitted that this issue was squarely

raised before the assessing authority as well as in appeal before the Tribunal and has been

repeated before us. According to the learned counsel appearing on behalf of the appellant,

although the issue was raised specifically, the

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question was not determined at all by any of the authorities below. Additionally, it is

submitted that if there were manufacture, then the Tribunal and the authorities below

had erred in classifying the goods in question under Chapter-20 of the Central Excise

Tariff Act, 1985. Without going into the second question, it appears to us prima facie, that

the first grievance of the appellant is correct. However, we note that the issue as to

whether roasting and salting amounts to manufacture is the subject matter of an appeal in

the case of Commissioner of Central Excise Vs. Phil Corporation Ltd. which has been

admitted by this Court on 15.3.2002 from the decision of Central Excise Gold (Control)

Appellate Tribunal reported in 2002 (144) ELT 585 wherein the Tribunal held that the

activity of salting and roasting cashew nuts, peanuts and almonds etc. to dry roasting and

oil roasting does not amount to manufacture within the meaning of the word in Section 2

(f) of the Central Excise Act, 1944. The Registry is directed to place the appeal, namely,

the Commissioner of Central Excise vs. Phil Corporation Ltd.(supra) pending before this Court provided it is otherwise ready for hearing. Let this matter and all ready matters pertaining to either the issue of manufacture of edible nuts which have been roasted and salted or pertaining to their classification be listed along with the aforesaid appeal.

The appellants have filed an application for interim relief, I.A.No.9/2006 in which it has been stated that the Central Excise authorities have attached certain movables of the appellant No.1 on 22.2.2006.

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In the light of our prima facie observations, as recorded aforesaid, we are of the view that the appellants are entitled to some form of interim relief. Accordingly, subject to the appellant's providing security by way of bank guarantee covering only the amount relating to the actual demand for duty allegedly short levied and excluding any other amount by way of penalty etc., the attachment will be lifted. The bank guarantee shall be executed in favour of the Commissioner of Central Excise, Delhi and shall be of a Nationalized Bank. The Bank guarantee shall be kept renewed pending disposal of the appeal. The bank guarantee shall contain a clause that in the event the appellants do not renew the bank guarantee within the time specified therefor the Bank will on its own and forthwith deposit the entire guaranteed amount with the Registry of this Court. Such amount, if deposited will be held subject to further orders of this Court.

It is made clear that the Bank Guarantee amount shall cover the demand less any amount that had already been paid or deposited by the appellant with the Central

Excise authorities pursuant to the impugned show cause notice in question.

(Usha Bhardwaj)

Court Master

(Madhu Saxena)

Court Master