

**(1996) 12 SC CK 0154**

**Supreme Court of India**

**Case No:** Civil Appeal No. 1109 of 1986

Mermaid Marine Products Pvt.  
Ltd.

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

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**Date of Decision:** Dec. 12, 1996

**Acts Referred:**

- Central Excise Rules, 1944 - Rule 8(1)

**Citation:** (2003) 89 ECC 729 : (1997) 68 ECR 758 : (1997) 89 ELT 442 : (1997) 10 SCC 404

**Hon'ble Judges:** S. P. Bharucha, J; S. C. Sen, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

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### **Judgement**

1. As the statements of the appellants, extracted by the Customs, Excise and Gold (Control) Appellate Tribunal in the judgment and order under appeal, show, the appellants run a fish meal plant and fish oil is a by-product thereof. It is the contention of the appellants that they are entitled to an exemption from payment of excise duty in respect of the fish oil under a Notification (No. 115/75) dated 30-4-1975 issued under Rule 8 of the Central Excise Rules, 1944. That Notification exempts goods manufactured in the factories specified in its Schedule. The Schedule includes oil mills. The Tribunal took the view that the exemption did not apply to the appellants, and we agree. The exemption is, squarely, applicable to goods manufactured in an oil mill. The oil that is produced by the appellants, in respect of which the exemption is claimed, is produced in a fish meal plant, not in an oil mill. Such fish oil, therefore, is not exempted under the said Notification.

2. The other contention on behalf of the appellants is that there had been no fraud, collusion, wilful misstatement or suppression of fact or contravention of any of the provisions of the Central Excises and Salt Act, 1944, or the Rules thereunder with intent to evade payment of excise duty, which is the requirement if recovery is

sought to be made after the ordinary period of 6 months. The Tribunal noted that the appellants had been called upon to obtain an excise licence in respect of the fish oil in or around October, 1977; that they had thereafter applied for a licence on 9-5-1978; that that licence had been found to be defective and was returned; and that thereafter the appellants had done nothing in that regard. The fact that the appellants had, in these circumstances, written representation after representation, which, the Excise authorities stated, had been referred to higher officials is of no account.

3. We must note that we had, by our order dated 30-10-1996, directed the Excise authorities to state on affidavit whether or not fish oil plants were being subjected to Central Excise duty in States other than the State of Kerala, where the appellants are placed. An affidavit has been filed which, rightly, makes the distinction that we have pointed out above, between a fish meal plant and an oil plant.

4. The appeal is dismissed. There shall be no order as to costs.