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**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Feb-13-1998

**Reported in** : (1998)(101)ELT711TriDel

**Appellant** : Suru Chemicals and

**Respondent** : C.C.E.

**Judgement** :
1. These are appeals against the orders of Collector of Central Excise (Appeals), Bombay dated 16-2-1989 and 19-4-1990.

2. Learned Counsel stated that the appellants are engaged in the manufacture of the excisable goods, namely, 'Lanolin Anhydrous Commercial' and 'Lanolin Anhydrous I.P.' amongst others. The appellant filed a classification list with effect from 1st March, 1986 classifying the product viz. 'Lanolin Commercial' under 3801.90.

However, the A.C. granted his approval to the said list on 28th August, 1986 holding the classification of the said product under sub-heading No. 2913.00 of the Tariff Act and granting slabwise exemption to it under Notification No. 175/86-C.E., dated 1-3-1986 as amended and 'Lanolin Anhydrous IP.' also under the sub-heading 2913.00 and granting total exemption to it under Notification No. 234/86-C.E. The Department filed an appeal on the ground that the products namely 'Lanolin Commercial' and 'Lanolin Anhydrous I.P.' were classifiable under sub-heading No. 1507.00 of the Tariff Act and not under sub-heading No.2913.00. The

Collector (Appeals) accepted the appeal of the Department.

3. It was also his submission that the products viz., 'Lanolin Anhydrous I.P.' is a bulk drug and eligible for total/partial exemption under Notification No. 234/86, dated 3-4-1986 and/or Notification No.31/88-C.E., dated 1-3-1988, as the case may be. It is a pharmaceutical aid and is considered as 'Drug' for the purpose of the Drugs & Cosmetics Act, 1940. This is evident from the Licence No. 556, dated 4-4-1978 issued by the Foods & Drugs Administration Authority as well as the certificate dated 23-1-1987 issued by the Drugs Controller of India. The opinion of Drug Controller certifying that the product viz., 'Lanolin Anhydrous I.P.' is a 'bulk drug' cannot be ignored. In support of his contentions, he relied upon the following judgments:- (a) Leukoplast (India) Ltd. v. State of Goa reported in 1988 (36) E.L.T. 369A (Bom.).Roussel Pharmaceuticals (P) Ltd. v. Collector reported in 1988 (37) E.L.T: 266 (Tribunal).

4. It was his contention that it has not been denied by the lower authorities that the said product conforms to the Pharmacopoeial standards and is covered by the Indian Pharmacopoeia, 1985. This is also evident from the relevant page bearing Nos. 545 and 546 of the Indian Pharmacopoeia, 1985 as well as the certificate dated 30th June 1987 issued by Raptakos Brett Test Laboratories Ltd. Once the lower authorities accepted that the said product is pharmaceutical aid and conforms to the Indian Pharmacopoeia standard, it was incumbent upon them to hold the product classifiable under Chapter 29 as 'bulk drug' and admissible for exemption under notifications dated 3rd April, 1986 and /or dated 1-3-1988. The adjudicating authority had not supported its finding to the effect that the said product being only pharmaceutical aid was not admissible for exemption under the said notification as 'bulk drug' by the legal and valid and conclusive evidences and/or authorities. He also referred to letter No.24/20/63-CX. I, dated 7-2-1963 of CBEC wherein the Board had clarified that distilled water for injection is considered as 'Drug' for the purposes of Drugs & Cosmetics Act, 1940 and accordingly, is liable to duty as medicine. It is submitted that distilled water for injection is also a pharmaceutical aid as per Indian Pharmacopoeia, 1985. He also submitted that the product under reference viz., 'Lanolin Anhydrous I.P.' is a pharmacopoeial preparation conforming to Indian Pharmacopoeia, 1985 and is

used as ingredient in pharmaceutical specialities to improve the efficacy and healing property. This is evident from the Certificate dated 30-10-1985 issued by one of the customers of the appellants viz., M/s. Rallis India Ltd. The adjudicating authority had even ignored the report of Dy. Chief Chemist on the samples of 'Lanolin Commercial' and 'Lanolin Anhydrous I.P.' the contents of which were communicated to the appellants by the Supdt. of Central Excise vide letter dated 21-10-1987 and were available in the records.

5. It was also his submission that the product under dispute is correctly classifiable under subheading 2913.00 or 2942.00, as the case may be, and not under 1507.00 as 'Lanolin' is not covered by any of the products mentioned in the said sub-heading. The adjudicating authority has wrongly concluded that 'Lanolin' is 'Degras' and/or 'Wool grease residues'. He submitted that the 'Lanolin' and 'Degras' are technically and commercially two different commodities. 'Degras' is a source of 'Lanolin' and the later has altogether different characteristics and qualities from the former. The appellants referred to the definitions of the terms 'Lanolin' and 'Degras' given at page Nos. 600 and 309 respectively of the Condensed Chemical Dictionary (10th Edition) by Gessner G. Hawley. The later part of the description of Heading No.15.07 is derived from the Heading No. 1522.00 of Harmonized Commodity Description and Coding System (CCCN). The detailed explanatory notes to Heading 1522.00 under CCCN given at page 120 and 121 at Exhibits 'SI' and 'S2' make it clear that the product 'Lanolin' is not covered under said heading. The appellants further submit that the reliance on the explanatory notes to Chapter 15 on 'Lanolin' as given in CCCN is misplaced under the facts and circumstances of the present case inasmuch as said Explanatory notes relate to Lanolin for those industrial uses as given in that note like for the preparation of lubricants, emulsifiable oils or dressings, whereas Lanolin Anhydrous I.P. is different than the Lanolin to which said notes relate, 'Lanolin Anhydrous I.P.' is used in pharmaceutical preparations. Otherwise also, the said explanatory notes cannot be of any avail while classifying the products under reference as the same are not relevant under the given circumstances. The explanatory note on which the adjudicating authority has relied and quoted in his order is for Heading No. 15.05 of CCCN and the said heading is very specific. However, the Central Excise Tariff has no such heading resembling Heading

15.05 of CCCN. Thus, when a heading of CCCN is not found in the same Chapter of the Central Excise Tariff, the explanatory notes under CCCN relating to that heading cannot be applied while classifying the goods under the Central Excise Tariff. In support of these submissions, the appellants relied upon the following judgments :-Keltron Power Derives Ltd. v. Collector reported in 1987 (28) E.L.T. 93 (Tribunal).Voltas Ltd. v. Collector reported in 1987 (27) E.L.T. 173 (Tribunal).Kesoram Rayon v. Collector reported in 1988 (37) E.L.T. 312 (Tribunal).

6. It was also his submission that even if it is assumed without admitting that besides sub-heading No. 2942.00, the sub-heading No.1507.00 also apply to the said products, by virtue of Rule 3(c) of the Rules for Interpretation of Tariff Schedule, the same should be classified under sub-heading Nos. 2913.00 or 2942.00, as applicable and in force at the relevant time, as these heading occur last in the numerical order. These Interpretative rules have statutory forces and are binding in nature. In support of these submissions, the appellants relied upon the following decisions :-Keltron Power Derives Ltd. v. Collector He submitted that even if there was any doubt regarding the classification of product, such doubt must be resolved in favour of the assessee. Moreover, a question of classification involving technical questions should not be decided without technical opinion and evidence.

7. Learned DR drew attention towards the impugned order and in particular, to the finding portion thereof. He emphasised that 'Lanolin Anhydrous I.P.' by itself is not a pharmaceutical preparation containing any therapeutic agent. It is not an ingredient of any medicines formulation or any medicine but, only a pharmaceutical aid.

8. It is mainly used for preparation of lubricants and ointments and cosmetics etc. Therefore, 'Lanolin' whether of I.P. or commercial grade is classifiable under Heading 15.07.

9. He would also like to submit that Chapter titles do provide a broad indication of the goods sought to be covered within the respective chapter and in this connection, he would cite the following case law :-Bharat Heavy Electricals Ltd. v. CCE reported in 1988 (34) E.L.T. 226 (T).

(d) CCE v. Metrowood Engg. Works reported in 1989 (43) E.L.T. 660, 670 &671.

Furthermore, the HSN notes have a pursuasive value. It was also his submission that primary or pre-dominant use or function of the article is one of the most important factors since the identity of the goods is associated with its pre-dominant use or function. It was also his contention that a more specific description should be preferred to a more general description. It was his contention that 'Lanolin' is basically an organic chemical, the main function of which is not that of bulk drug, whereas Notification 234/86 is applicable to 'bulk drugs' falling under Chapter 28 or 29 whereas Chapter 15 covers Animal or Vegetable Fats and Oils and Their Cleavage Products and it is a product of this type being more or less like such product. It was also his submission that the issue is fully covered against the assessees both on classification and notification.

10. We have considered the above submissions. We observe that the submissions of the appellants have a strong force. It is also observed that the Pharmacopoeia of India (Volume II) indicates as follows :- Description : Pale yellow substance with the consistency of an ointment; odour, characteristic. When melted, it gives a clear or almost clear yellow liquid.

Solubility : Practically insoluble in water; sparingly soluble in alcohol; freely soluble in solvent ether, and in chloroform.

Standards : Wool fat is the purified, anhydrous, fat-like substance obtained from the wool of sheep." The Condensed Chemical Dictionary 'Tenth Edition' by Gessner G. Hawley indicates inter alia as follows :- "Degras. Crude wool grease obtained by solvent-washing of wool. It is a dark brown semisolid with strong, upleasant odor and high water-absorbing capacity. A type known as moellen degras is a by-product of tanning chamois leather with various fish oils. The chief use of degras is as the source of lanolin; minor uses are in leather dressing and printing inks." Properties: (Hydrous): Yellowish to gray semisolid containing from 25 to 30% water; slight odor. (Anhydrous) : Brownish-yellow semisolid containing no more than 0.25% water, but can be mixed with about twice its weight of water without separation. Nontoxic.

Derivation : Purification of degras, a crude grease obtained by solvent-treatment of wool. Contains cholesterol esters of higher fatty acids. Hydrogenated, ethoxylated and acetylated derivatives are available.

Uses : Ointements; leather finishing; soaps; face creams facial tissues; hair-set and suntan preparations." 11. In the HSN, under Heading 15.05, it is mentioned inter alia, as follows :- "15.05 WOOL GREASE AND FATTY SUBSTANCES DERIVED THEREFROM (INCLUDING LANOLIN)" Lanolin, obtained by purifying wool grease, has the consistency of an ointment; it ranges in colour from yellowish-white to brown according to the degree of refining, deteriorates only very slightly in the air and has a faint, characteristic odour. Lanolin is very soluble in boiling spirit but insoluble in water, although it can absorb a large quantity of water, turning into an unctuous emulsion known as hydrated lanolin.

Anhydrous lanolin is used for the preparation of lubricants, emulsifiable oils or dressings. Hydrated or emulsified lanolin is mainly used for the preparation of ointments or cosmetics.

Slightly modified lanolin, which retains the essential character of lanolin, and wool alcohols (also known as lanolin alcohols-mixtures of cholesterol, isocholestrol and other higher alcohols) are also covered by this heading.

The heading excludes chemically defined alcohols (generally Chapter 29) and preparations based on lanolin, for example lanolin to which medicated or perfumed substances have been added (Heading 30.03 or 30.04, or Chapter 33). Also excluded are lanolins so extensively modified chemically that they have lost the essential character of lanolin, for example lanolin ethoxylated to such an extent as to be water soluble (usually Heading 34.02)." 12. The above description, grades and uses show that lanolin and degras are not synonymous and the appellants are right in stating that degras is a source of lanolin.

Further, lanolin has multiple uses and a number of grades. It is obvious that only lanolin of the grade prescribes in IP, USP, BP or some other recognised Pharmacopoeia alone can be used or can allowed to be used for pharmaceutical purposes whether as an aid or an ingredient or otherwise. The lanolin of cosmetic grade would be required for cosmetic purposes and lanolin technical grade for industrial purposes and the three cannot be treated in the same way. The fact that Pharmacopoeia of India describes it as a pharmaceutical aid (absorbent ointment base) thus shows that it is used in pharmaceutical preparations. It is immaterial from our point of view whether it is used as an ointment base or otherwise. That it is 'fat-like' by itself does not take us anywhere because many fat-like substances are required to be classified differently depending upon various factors of requirements of the ingredients of a particular heading or sub-heading.

The fact that it is also used as an ingredient in pharmaceutical preparations is also apparent from the certificate of Pharmaceutical Division of Rallis India Limited dated 30-10-1985 in which it has been mentioned inter alia that it is used by them as one of the ingredients in their (i) medicreme ointment & (ii) livoderm ointment and that lanolin anhydrous IP is used in their formulation to improve the efficacy and the healing property of their pharmaceutical specialities.

This has not been contradicted or shown to be wrong. The 'Certificate of Analysis' issued under the Drugs and Cosmetics Act, 1940 and rules thereunder by 'Raptakos Brett Test Laboratories Ltd., Thane' produced by the appellants certifies that the sample complies with the standards of I.P. and it has also not been contradicted or shown to be wrong. The Department's own test report also certifies it to be of I.P. grade. The Drugs Controller's certificate dated 23-1-1987 issued with reference to Notification No. 234/86-C.E., dated 3-4-1986 certifies that lanolin anhydrous I.P., is a bulk drug imported/manufactured under valid drug licence and eligible for exemption under Notification No. 234/86, dated 3-4-1986 for central excise duty.

13. The Notification No. 31 /88-C.E., dated 1-3-1988 clearly mentions in the Explanation that "In this notification, the expression "bulk drug" shall have the same meaning assigned to it in the Drugs (Prices Control) Order, 1987".

14. The Notification No. 234/86-C.E., dated 3-4-1986 gives its own definition under the heading 'Explanation' as follows :- "Explanation - In this notification, "bulk drugs" means any chemical or biological or plant product, conforming to pharmacopoeial standards, normally used for the diagnosis, treatment, mitigation

or prevention of diseases in human beings or animals, and used as such or as ingredient in any formulation." 15. The definition of 'Drugs' given in the Drugs Act has a larger amplitude than given in Explanation to Notification No. 234/86 and it is an inclusive definition. However, the fact remains that it also covers and emphasizes normal use for specified purposes including diagnosis, treatment, mitigation and prevention of diseases in human beings and animals and covers, inter alia, biological or plant product of pharmacopoeial standards and the Drug Controller has certified it to be a 'bulk drug' with reference to this definition.

16. There is no doubt that Chapter 15 of Central Excise Tariff covers "Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes" but it is not clear how the Department had classified the item under Heading 15.07 which reads as under :- "15.07 1507.00 Vegetable waxes (other than triglycerides), beeswax, other insect waxes and spermaceti, 17. As we have seen, 'lanolin' is different and distinguishable from 'degras' and it is also not a mere residue resulting from the treatment of fatty substances or animal or vegetable waxes, but is obtained by purification of degras. Therefore, the authorities below have erred in treating it as 'degras' or quite residue. The Pharmacopoeia of India describes it under the heading "Wool Fat" as 'fat-like substance' but it is nobody's case that it was classifiable under Heading 15.08 which covers "Margarine, edible mixtures or preparations of animal or vegetable fats; animal or vegetable fats and oils, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified; inedible mixtures or preparations of fats and oils of this Chapter". The fact that the HSN classifies it under Heading 15.05 does not necessarily mean that for Central Excise purpose also, it was classifiable under the same or similar heading because the Central Excise Tariff distinguishes between pharmacopoeial products and others. That the item in question is pharmaceutical product cannot be doubted in view of the above facts and certificates and it is not even disputed that it is of I.P. grade.

18. Once this much is recognised, the Department's contention, which was otherwise correct, that the principle or main use of the product is also a relevant criteria, does not advance their cause because a pharmacopoeial grade product is

expected to be utilised for pharmacological purpose as drug, medicine or pharmaceutical aid etc. or as an ingredient in medicinal formulation. Chapter 29 of the Central Excise Tariff covers "Organic Chemicals" and it is not in dispute that it is an organic chemical but it is Chapter 30 which covers "Pharmaceutical Products". Therefore, the only question which would arise to our mind is whether it would be classifiable under Chapter 29 or Chapter 30.

19. Since the appellants have claimed that it is a 'bulk drug' and the Drug Controller has also certified it to be a bulk drug and in the case of Notification No. 31/88, the definition of 'Drugs' as given in the Drugs Act has been adopted and in the other case, the certificate has been given with reference to Notification No. 234/86 and we find from 'The Condensed Chemical Dictionary' by Gessner G. Hawley that it is used in or as ointments also, therefore, reading the Pharmacopoeia of India with Hawley's Dictionary as well as the certificate of the users and that of the Drug Controller all taken together, it becomes clear that the product is usable as pharmaceutical aid as well as ingredient in ointments for medicinal purposes and utilised for one of the uses to which drugs and medicines are normally put. Chapter 29 also covers some chemicals which are normally prescribed and used as drugs or medicines which have mainly the physiological action and are used in medicine industry and are effective for preventing and treating deficiency diseases as for example, Vitamins. This Chapter also includes compounds which are essential for proper functioning and the harmones many of which are prescribed for prevention, treatment or cure of diseases e.g.

thyroid harmones and insulin etc. Similarly, it also includes even 'Antibiotics'. In other words, if an item which is a pharmaceutical product in the nature of a drug or medicine of pharmaceutical aid etc.

but not covered by Chapter 30, then it will be classifiable on merits and if it is an organic chemical, it will attract Chapter 29. It is, however, not clear as to how and why the appellants have prayed for and the A.C. had classified the item under Heading 29.13. Since Headings 29.12 and 29.13 read as follows :- "29.12 2912.00 Aldehydes, whether or not with other oxygen function; cyclic polymers of aldehydes; "29.13 2913.00 Halogenated, sulphonated, nitrated or nitrosated derivatives of products of It is, however, noteworthy that these two headings cover only "Aldehyde-Function Compunds" and not Esters of organic acids whereas according to Hawley's Dictionary, 'Lanolin' contains cholesterol of higher fatty acids, and hydrogenated, ethoxylated and acetylated derivatives are available. Since the A.C. has not passed a speaking order in this regard, he is required to re-determine the appropriate heading and sub-heading and pass a speaking order indicating clearly the reasons for his decision.

20. In view of the above discussion, the order of the Collector is set aside and the appeals are remanded to the Assistant Collector for de novo consideration in the light of above observations and the law.