

Avon Services Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-19-1998

Reported in : (1998)(102)ELT144TriDel

Appellant : Avon Services

Respondent : Collector of Central Excise

Advocate for Pet/Ap. : Shri. Gopal Prasad

Judgement :

1. The single issue for consideration in this case is whether "fire fighting foam compound, manufactured from horn and hoof meal of animals" merits classification under Chapter 5 as products of animal origin not elsewhere specified or under chapter sub-heading 3801.90 (as it then stood) as other miscellaneous products of the chemical or allied industries.

2. Shri Gopal Prasad, learned Advocate arguing the case for the appellants first argued the miscellaneous application for admission of additional evidence in the form of various certificates from persons concerned with the activity of fire fighting as also the buyers of the appellants' products. The various certificates state that the subject goods are carried in fire tenders and not used in fire extinguishers.

After hearing both sides, the certificates were taken on record.

3. We have heard Shri Gopal Prasad, learned Counsel for the appellants and Shri A.K. Madan, learned SDR for the Revenue.

4. Shri Gopal Prasad referring to the additional material placed on record sought to establish that the impugned goods are used in fire tenders and not in fire extinguishers. Referring to the sub-notes in the HSN under Heading 38.13, he claimed that the goods could not be described as charges for fire extinguishers or as preparations for fire extinguishers. To our mind, this argument does not sustain firstly because in the sub-notes, the preparations are not given a limited scope of coverage but that the preparations with a basis of bicarbonates, etc., are only illustrative examples of preparations for fire extinguishers. Secondly, as the Central Excise Tariff then stood, these sub-headings were not incorporated in the Tariff but that on reading the Tariff Entry and the description under the sub-headings, the only place where the goods could be classified under was the residuary category with the short description of "others".

5. The basic issue is whether the goods could be covered under Chapter 5 or not. The Heading covered "products of animal origin, not elsewhere specified or included". This description was identical to that occurring in the HSN at the material time. Therefore, the HSN could be the safe guide for establishing the classification of a given product.

The HSN in describing the scope of this Chapter clearly mentioned that the coverage thereof was limited to materials of animal origin unworked or having undergone a simple process of preparations. In effect, the coverage was confined to hair/offal, skins and feathers of birds, bones and shells of animals. Animal fat which could be removed by the scouring process was also kept out of the coverage. The Tribunal in their judgment in the case of Wool Combers of India Ltd. v. Collector of Central Excise -1994 (71) E.L.T. 120 held that crude grease obtained by solvent treatment of wool was classifiable as animal fat under Heading 15.01.

6. The lower proceedings give the process of conversion of bone and hoof meal into the end product marketable by the appellants. The horn and hoof were first ground. The meal was then hydrolised in water and hydrolated lime. The lime was separated and the liquor was filtered. It was then neutralised by sulphuric acid. It was then evaporated to attain a specific count of viscosity and specific gravity.

Thereafter small doses of stabilisers and preservatives were added. Given the elaborate processing of the initial meal which no doubt fell under the description of the animal products, the resultant products would hardly qualify for inclusion under Chapter 5. We find no substance in the appellants' plea that the product should continue to be called as a product of animal origin.

7. The Collector in his impugned order has given exhaustive reasons as to how the product qualifies for the term miscellaneous products of the chemical or allied industries. Chapter Note 1(m) made for the inclusion of preparations and charges for fire extinguishers for coverage thereunder. We have earlier held that the pattern of the Chapter Heading having been changed from the HSN, the sub-notes have a limited authentication. Therefore, the term "preparations for fire extinguisher" should be given a wider scope. The classification lists filed by the appellants themselves show that the impugned goods were specifically used for fire fighting. Once it is held that the goods did not fall under Chapter 5, the alternative Heading available was 38.01.

The assessee during the lower proceedings have not claimed a third classification nor has any claim about an alternative classification was made before us. We, therefore, find no reason to interfere with the impugned order and dismiss this appeal.

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