

Gujarat Pharmaceutical and Vs. Collr. of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-24-1984

Reported in : (1989)(43)ELT517TriDel

Appellant : Gujarat Pharmaceutical and

Respondent : Collr. of Customs

Judgement :

1. M/s. Gujarat Pharmaceutical & Chemical Works imported xylidine and diethylamine through Bombay port. They claimed exemption under Notification No. 55/75-C.E. as they use this in the manufacture of anesthetics in their factory. The custom house rejected their claim to exemption. The Appellate Collector of Central Excise, Bombay in his order dated 1-9-1980 said that the appellants use it for manufacture of drugs but he held this was not sufficient. He came to this conclusion because the goods "have versatile uses" (sic) including the manufacture of dye stuff and that every indication was that their principal use was not as a drug intermediate.

2. The learned counsel for M/s Gujarat Pharmaceutical said that the Appellate Collector was not correct because no substance that is used as a drug intermediate had its principal use there and had no other uses. The Tribunal had rejected in 2984(17) ELT 185 Trichem Laboratories v. Collector of Customs, Bombay the test of predominant use or variety of uses and ruled that even if a substance had other uses which might predominate over its use as a drug intermediate, it would still be classifiable as a drug intermediate in respect of that

quantity used as drug intermediate in drug manufacture.

3. The learned counsel also pointed out that their xylidine and diethylamine had been actually used in the manufacture of lidocaine and lignocaine hydrochloride, and the excise authorities had certified so.

The appellants point to a notice by Baroda Central Excise Collectorate No. 21/80 dated 29-1-1980 which, recognizing that the name of "drug intermediate" was not very precise, prescribed a procedure to ensure that actually the substance was used as a drug intermediate, if it was to earn exemption under Notification No. 55/75-C.E.4. The learned counsel for the department said that the Tribunal has decided several appeals by extending the exemption under Notification No. 55/75-C.E. to the cases that had been rejected by the custom houses. But he said he still opposed this appeal as he thought the Appellate Collector's order was right.

5. We do not agree with the department. No chemical has the drug industry as the preponderant use. All chemicals used in the drug industry have several other uses not connected with that industry. We do not think predominant use, even if such use can be ascertained is a suitable or practical test. To look for preponderant use is to assume that there is such a substance, and that such preponderant use can be determined. We are satisfied that no such assumption can be made. We hold that, in a subject like this, actual use is the only basis for the exemption.

6. Nor is exclusive use a useful tool here. No chemical has exclusive use in the drug industry, nor even likely to. Hence, again, we come back to actual use as the only sure and guiding measurement.

7. We must also point out that the learned Appellate Collector who gave this judgment, reversed himself later on both points viz. preponderant use and exclusive use. He changed his mind because he was convinced he was mistaken. He came to the conclusion that use was the best base.

8. The name "drug intermediate" is indeed not a precise definition, though one that is used widely. A substance may be an intermediate in certain uses but may be a finished product in other. This is true in all branches of science, but more so in

chemical science. We all know of a dye that is a finished product, being used as an intermediate to produce more advanced dyes.

9. Some people have sought to define a drug intermediate as the penultimate product before the finished goods. We are not able to see the merit or basis for this.

10. We are of the view that xylidine and diethylamine when they are used in the manufacture of anesthetics, should be classed as drug intermediate and given the exemption under Notification No. 55/75-C.E. We order accordingly, allowing the four appeals. Refund shall not be delayed without good and sufficient cause.

11. The custom house can verify, if it wishes, that these consignments of xylidine and diethylamine have been used as drug intermediate.

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