

**Johnson and Johnson Ltd. Vs. Commissioner of Central Excise**

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

**Decided On :** Jul-14-2000

**Reported in :** (2000)(121)ELT41Tri(Mum.)bai

**Appellant :** Johnson and Johnson Ltd.

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. This is an application for stay of collection of Rs. 56,17,204/- being a duty demanded under the products manufactured by the applicant known as Unsterilized Absorbable Sutures. It is the claim of the assessee that the said product comes under heading 0501.00. The department claim classification under Ch. Sub-heading 4201.90 of the Tariff.

2. Shri Rohan Shah appearing along with Miss Godrej contended that the product can only be classified under sub-heading 0501 not under subheading 4201.90 as claimed by the department. He states that in an earlier occasion the Commissioner (Appeals) by his Order-in-Appeal No.RJB/53/M- 11/2000 dated 8-2-2000 had classified the said item under sub-heading 0501.00. Shri Rohan Shah further stated that the department has filed an appeal in the Tribunal No. E/1431/2000. He therefore states that prima facie case is in his favour. He no doubt states that the process involved is as stated in page 85 of the paper book which among other things mentions twisting of the product into strands. When we look into HSN Notes at page 615 dealt with under subheading 42.06 it states that the said heading includes Catgut, manufactured by twisting strips of cleaned and

dried gut, especially sheep's gut. The twisting has been excluded in the Chapter Notes 5 in HSN Notes which reads on page 35 thereof as follows: "This Chapter covers a variety of materials of animal origin, unworked or having undergone a simple process of preparation, which are not normally used as food (except certain blood, guts, bladders and stomachs of animals) and which are not dealt with in other chapters of the Nomenclature" The word "twist" has been mentioned in the HSN Notes at Chapter 42.06 which has been referred to in the earlier portion of our order. We are therefore prima facie of the view that the product may come within the ambit of Chapter 42. It is true that in this case Commissioner (Appeals) has decided in favour of the appellant. It is also true that in case the appellant is directed to pay any amount of duty, the appellant may be entitled to the modvat credit. This may amount to a situation of revenue neutral. That may be so. But the fact remains that the question involved in this case is whether the classification has to be done either under Chapter 5 or Chapter 42. The fact of revenue neutral cannot be indicator of classification of any product. We therefore call upon the assessee to pay Rs. 30 lakhs as a pre-deposit for prosecuting their appeals which will be done within 15 days of receipt of the order.

3. During the course of the argument Shri Rohan Shah with his usual alacrity and marked ability argued that the amount involved in this case may be Rs. 57 lakhs and 50% thereof may come to Rs. 28,50,000/- but if one has to calculate the totality of the amounts which may be involved including the Appeal No. E/1431/2000 as also other show cause notices which are in pipeline it may come to more than Rs. 2 crores. We note the same. Normally we grant out of turn hearing where the question involved is of repetitive nature and the amount involved is more than Rs. 1 crore. These two cases may fall within that category. However after the compliance of this order the appellant may approach this Tribunal for fixation of early hearing of the appeals. Ordered accordingly.

4. During the course of the arguments, we suggested that in case any amount is paid towards the prosecution of this as to appeal as a pre-deposit the point regarding the Jurisdictional Assistant Collector SHALL CONSIDER as to the admissibility of granting of Modvat credit [under] Rule 57E of the Central Excise Rules, 1944 taking note of the latest Judgment cited by the Tribunal in the case

after the party files the claim for the same and at the time of final hearing. The Ld.

Counsel cited certain decision of the Tribunal in some cases which we feel not necessary to deal with them as we are dealing with the stay application only. Compliance to be reported on 17-7-2000.

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