Commissioner of Central Excise and Vs. M/S. United Phosphorus Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-02-2001

Appellant : Commissioner of Central Excise and

Respondent : M/S. United Phosphorus Ltd.

Judgement :

1. This appeal from the Revenue was argued by Smt. Reena Arya, SDR.Shri Prakash Shah, advocate, along with Shri P. Poojari, appeared for the respondents.

2. The assesses manufactured zinc phosphide technical and zinc phosphide 2% RB claiming classification under heading 3808.10 and benefit of notification 14/94. The Assistant Commissioner in his order held that the products were rodenticides and did not merit cover under heading 3808.10. He opted for the alternate classification under heading 3808.90 and confirmed the differential duty. In his order-in-appeal the Commissioner relied upon the Tribunal's judgment in the case of Ultima Search later reported in 1996 (81) ELT 220. On his reversing the lower orders the Revenue have filed this appeal.

3. When the grounds of appeal were argued by Smt. Reena Arya, the claim made is that the contested products are rodenticides used for plant protection and cannot be "100% insecticide or pesticides". No contest is made of the Tribunal judgment on which reliance was placed. However, subsequently in January, 2001 a paper book was filed with entirely different and illogical grounds of appeal. In this compilation the attempt has been made to distinguish the facts from those which were before the Tribunal in the Ultima case.

4. We have seen the Ultima judgment. We have also seen another judgment reported in 1999 (111) ELT 397 (CCE vs. Excel India) in which the same product was again classified under heading 3808.10. In this judgment the Tribunal has gone into the same issue at a greater length. The HSN note also does not support the Revenue.

5. In the absence of any material produced by the Revenue, we find no reason to interfere with the impugned order. The appeal is dismissed.