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Collector of Central Excise and Vs. General Pharmaceutical Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-30-1986

Reported in : (1986)(9)ECC211

Appellant : Collector of Central Excise and

Respondent : General Pharmaceutical Pvt. Ltd.

Advocate for Def. : Mr. Parekh

Advocate for Pet/Ap. : Mr. Dhanuka

Judgement :

1. Collector of Central Excise and Customs, Pune has filed an appeal being aggrieved from order in appeal No. M-1653/PN-115/84 dated 6.8.84 passed by Collector of Central Excise (Appeals), Bombay.

2. Briefly, the facts of the case are that M/s. General Pharmaceuticals Pvt. Ltd., Kasarwadi are manufacturers of 'Diakanol AMH' as one of their products. The respondent had claimed that the product has padding applications especially in fabric industries and had claimed its classification under tariff item 68 keeping in view tariff advice No.43/77 with applicable benefits available to small scale industries under relevant notification. In order to ascertain the properties of the product, the samples of the same were sent to the Deputy Chief Chemist, Bombay on 10.3.1983 and as per Chemical Examiner's report dated 10.5.1983 that sample was an "Acqueous solution of polyacrylamide synthetic resins", with the advice to

ascertain actual end-use of the product. The Revenue Authority had given a copy of the test report to the respondent, and stressing on the application of the product, the.

respondent clarified that the solution was applied to textile fabric by padding technique. Since the tariff advice as referred to above suggests that the padding solutions are classified under tariff item 68 and not under tariff item No. 15A. The respondent insisted to have classification of the product under tariff item No. 68 under appropriate benefits. A show cause notice on 26.8.8'3 was issued by the Range Supdt. for proper classification under tariff item No. 15A. In reply to the said show cause notice, the respondent contended that the product was a synthetic finishing agent used exclusively for finishing textile material. It is composed of sorgen 50 to the extent of 20% and diluent 80%. The product is highly soluble in the water and the solution is applied to the fabric by padding technique. In order to comply with observation of chemical examiner regarding end-use of the product, the respondent furnished opinion of Bombay Textile Research Association dated 25.8.83 and opinions of their dealers. Relying on these opinions as well as quoting Tariff Advice No. 43/77, the respondent clarified that the product was not classifiable under tariff item No. 15A but under tariff item 68. The learned Asstt. Collector of Central Excise did not accept the contention of the respondent and had held that the product was manufactured under tariff item 15A. Being aggrieved from the aforesaid order, the respondent had filed an appeal to the learned Collector of Central Excise (Appeals), Bombay. The learned Collector of Central Excise (Appeals) had held that the product in question 'Diakanol AMH' was correctly classifiable under tariff item No. 68 and set aside the impugned order and had allowed the appeal.

Being aggrieved from the aforesaid order, the Revenue has come in appeal before the Tribunal.

3. Shri A.S. Sundar Rajan, the learned Departmental Representative, has appeared on behalf of the appellant. He has reiterated the contentions made in the appeal petition and has pleaded that the Daikanol AMH is correctly classifiable under tariff item No. 15A(1) of the CET and not under tariff item 68 of the CET.

Shri A.S. Sundar Rajan has referred to the report of the Chemical Examiner, Central Excise Laboratory, Bombay which appears on page 37 of the Paper Book and as per report the sample was an aqueous solution of polyacrylamide synthetic resin and falls under tariff item No. 15A. He has pleaded that tariff item 15A has no relation to the end use of the product. He has referred to 'the judgment of the Hon'ble Bombay High Court in the case of Chemicals and Fibres v. Union of India reported in 1982 ELT 917 where the Hon'ble High Court had held that the rule that the words should be construed, in a popular sense will not be applicable in all cases and cannot be said to be all pervasive. This rule is a qualified rule and is applied to only if the statute contains knowledge which is capable of being construed in a popular sense and tariff item No. 15A of the Central Excise Tariff is not restricted to any particular product but refers to a class of products and item No. 15A must be given technique and scientific meaning and not popular meaning. He has referred to another judgment in the case of Dunlop India Ltd. and Madras Rubber India Ltd. v. Union of India and Ors. reported in 1983 ELT 1566 wherein the Hon'ble Supreme Court had held that when article is by all standard classifiable under a specific item in the tariff schedule, it would be against the very principle of classification to deny it the parentage and consign it residuary item. Shri Sundar Rajan has pleaded for the acceptance of the appeal.

4. Shri A.M. Setalvad, the learned Sr. Advocate, has appeared on behalf of the respondent. He has referred to the ground of appeal No.3 wherein the appellant has mentioned that the respondent is manufacturing 'Diakanol AMH' mainly from a product known as "Sorgen-50". The "Sorgen-50" is manufactured from acrylamide. The chemical analysis of the product also shows that it is "and aquerus solution of polyacrylamide synthetic resin" (copy of test report of Deputy Chief Chemist, Bombay is enclosed and marked as Exhibit 'A'). Polyacrylamide is a derivative of polyacrylic (formed as a result of reaction between polyacrylic and ammonia) poly-acrylic derivatives clearly fall under T.I. 15A(1). He has referred to the Tariff Advice No. 43/77 dated 12.12.77 which appears on page 32 of the paper book. The learned Sr.

Advocate has referred to the judgment of the Hon'ble Gujarat High Court in the case of Navgujarat Paper Industries v. Superintendent of Central Excise and Ors.

reported in 1977 ELT (367) wherein the Hon High Court had held that even if a trade notice amounts not more than executive instructions, it would be binding on the department and department would be estopped from contending that what was mentioned in the trade notice should not be adhered to. The Hon. High Court had followed an earlier judgment of the Hon. Supreme Court in the case of Union of India and Ors. v. Anglo Afghan Agency reported in AIR 1968 Supreme Court 718. He has pleaded that the tariff advice No. 43/77 dated 12.12.77 is binding on the Revenue Authorities and Revenue Authorities cannot disregard the same. He has referred to another judgment of the Hon. Bombay High Court in the case of Guest Keen Williams Ltd. v. Union of India reported in 1980 ELT 6 wherein the Hon'ble High Court had held that the instructions contained in a trade notice regarding classification of a product would be binding on the department and the department would be estopped from contending to the contrary. It has also referred to another judgment of the Hon. Bombay High Court in the case of Star Chemicals (Bombay) Ltd. v. Union of India and Ors.

reported in 1980 ELT 133 (Bom.) wherein the Hon. High Court had held that the trade notice regarding classification of a product is binding on the department and the department would be estopped from contending to the contrary. He has 'pleaded that in view of the judgment cited by him it was not open to the Revenue Authorities to classify the goods in dispute under tariff item 15A and that the goods are classifiable under tariff item 68 of the CET. The learned Advocate has referred to the letter dated 9.9.83 addressed to the Supdt. of Central Excise, Pune which explains the details of 'Diakanol AMH'. This letter has been written by Indo Chem. Ltd. to the said authority with a copy to the appellant. The learned Advocate has referred to a certificate from the Bombay Textiles Research Association dated 25.8.83 which appears on page 27 of the paper book and as per that certificate 'Diakanol AMH' was used by them in the finishing bath for imparting a bulky handle to the finished fabric. The padding solution for imparting a durable bulky handle to the textile material is prepared. 2 kg. of Diakanol AMH is dissolved in 50-60 1 of water and then 6 kg. of Diakamin DHL) (cross-linking agent of DMDHEU type) and 1 kg. of magnesium chloride hexhydrate (catalyst) are added and the solution is made upto 100 1.

The fabric. to be finished is padded with the above solution on a padding mangle with 2 dips so as to have a wet pick up of around 70%.

The padded fabric is dried at 100C for 5 min and then cured at 190C for 4; minutes and the fabric finished as above possesses a durable bulky handle in addition to its wash and wear properpties. The use of the padding Solution of Diakanol AMH (in the absence of cross-linking- agent and catalyst) imparts a semi-durable bulky handle to the finished fabric and it could be used for finishing both woven and knitted fabrics made, of cotton or its blend with rayons and synthetics. The learned Advocate has referred to a show cause notice dated 30.9.1982 which appears on page 30 of the paper book and has pleaded that earlier the goods were being classified under tariff item 15A and the Revenue had revised the same to tariff item 68 and the respondent vide his letter dated 24.10.82 had accepted the said classification and the said letter appears on page 29 of the paper book. The learned Advocate has referred to a certificate dated 23.4.84 issued by the Standard Mills Co. Ltd., Bombay. He has pleaded that the same was filed before othe Collector of Central Excise (Appeals) and appears on page 11 of the paper book. He has stated that Standard Mills Co. Ltd. are the consumers of the appellant's product 'Diakanol AMH' and in the certificate the consumer has confirmed - "Our mill is using Diakanol AMH or similar products for the finishing of Textiles. The product is used by preparing a solution of the product 20-30 g/1 and applied to textiles by padding technique. The padding solution is also mixed with other additives such as softners for application on Textiles. The product imparts bulky handle to the fabric." The learned Advocate has referred to the order in original. The learned Advocate has also referred to the grounds of appeal filed before the Collector (Appeals) and has also referred to page 9 of the order passed by the Collector (Appeals). The learned Advocate has referred to the judgment of the Tribunal in the case of Empire Industries Ltd. v. Collector of Central Excise, Bombay reported in 1985 (19) ELT 572 where the Tribunal had held that commercial uses or parlance can be relevant as an identifying test only where it has been specifically so provided in the first schedule to the Central Excises and Salt Act itself like items 3, 15 or 23D thereof and not in construing other items wherein there is no specific reference to commercial uses of parlance. Such a contention could never have been conceivably advanced for the simple reason

that the Act speaks of "excisable goods" (and not "articles" or "products").

Once conceptually excise is a duty levied on "goods", one cannot exclude commercial usage or parlance in their identification, for goods are what are bought and sold. The contention to the effect that commercial usage or parlance can be relevant for the construction of only those items in the Schedule wherein there is specific reference to it, now surprisingly sought to be advanced for the respondent, does not deserve any serious consideration Lastly, the learned Advocate, has referred to the Chemical Examiner's report, which appears on page 37, and has pleaded that even the Chemical Examiner has mentioned that "acltual uses of the product may be ascertained before finalising assessment". He has pleaded that even the Chemical Examiner has not mentioned the actual use of the product and as such the Revenue has got no case. The appeal filed by the Revenue should be dismissed.

5. Shri A.S. Sundar Rajan, the lerned JDR, has referred to his ground of appeal No. 3 and has pleaded that Diakanol AMH is manufactured from acrylamide. He has stated that polyacryiamide is a derivative of only polyacrylic (formed as a matter of reaction between polyacrylic and ammonia) polyacrylic derivatives clearly fall under T.I. 15A(1). Shri Sundar Rajan has pleaded that the learned Sr. Advocate has referred to the judgment of the Hon'ble Gujarat High Court in the case of Nav-gujarat Paper Industries v. Superintendent of Central Excise reported in 1977 ELT (367) wherein it was held that the trade notice would be binding on the Department and the Department would be estopped from contending that what was mentioned in the trade notice should not be adhered to contradict the argument of the learned Sr. Advocate Shri Sundar Rajan has referred to a judgment of the Hon. Bombay High Court in the case of The Union of India v. The Elphinstone Spinning and Weaving Mills Co. Ltd. reported in 1978 ELT (3680) wherein the Hon.

Bombay High Court had held that even if wrong trade notices are issued still the Government cannot be estopped from convassing the true interpretation of the statute before a court of law as trade notices have no statutory effect. Shri Sundar Rajan, the learned Departmental Representative, has pleaded that the tariff advice

issued by the Revenue Authorities is not in accordance with the Central Excise Tariff and as such the Revenue is not estopped. Shri Sundar Rajan has referred to pages 34 and 35 of the paper book which is a show cause notice. He has pleaded that the order passed by the learned Collector of Central Excise (Appeals) is not correct in law and the same should be quashed and the order passed by the learned Assistant Collector should be restored.

6. After hearing both the sides and going through the facts and circumstances of the case we would like to observe that 'Diakanol AMH' is manufactured from a product known as 'Sorgen-50'. 'Sorgen-50' is manufactured from acrylamide. The chemical analysis of the product also shows that "it is aqueous solution of polyacrylamide synthetic resin".

Polyacrylamide is a derevative of polyacrylic (formed as a result of reaction between polyacrylic and ammonia). Chemical meaning of polyacrylamide from the Condensed Chemical Dictionary : Tenth Edition by Gessner G. Hawley is reproduced below :- Properties : Colorless, odorless crystals; m.p.84..5C; b.p. (25 mm) 125C; sp. gr. 1.122 (30C; soluble in water, alcohol, acetone; insoluble in benzene, heptane. The solid is stable at room temperature but may polymerize violently on melting.

Derivation : Reaction of acrylonitrile with sulfuric acid (84.5%) and neutralization.

Hazard : Toxic by. skin absorption. Irritant to skin and mucous membranes. Tolerance. 0.3 mg per cubic meter of air.

Uses : Synthesis of dyes, etc; cross-linking agent; adhesiyes, paper and textile sizes, soil conditioning agents; flocculants; sewage and waste treatment; ore processing; permanent press fabric." Chemical composition and scientific details of polyacrylamide from the Condensed Chemical Dictionary: Tenth Edition by Gessner G. Hawley are also reproduced below :- "polyacrylamide (CH2CHOCONH2))x. White solid; water-soluble high polymer.

Derivation : Polymerization of acrylamide with N,N'- methylene bisacrylamide. A Uses : Thickening agent) suspending agent; additive to adhesives.

Permissible food additive." Relevant extract from item 15A(i) of the Central Excise Tariff is also reproduced below :- " ... polymerisation and co-polymerisation products (for example, polyethylene, polytetrahaloethylenes, polyisobutylene, polystyrene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives, polyacrylic and polymethacrylic derivatives coumaroneindene resins);------" A simple perusal of the tariff item and the chemical composition of polyacrylamide reflects that derivatives of polyacrylic and polymethacrylic fall under tariff item 15A. The Hon'ble Supreme Court in the case of Dunlop India Ltd. and Madras Rubber Factory Ltd. v.Union of India reported in 1983 ELT 1566 had held that when an article is by all standards classifiable under a specific item in the tariff schedule, it would be against the very principle of classification to deny it the parentage and consign its residuary item. Para No. 37 of the said judgment is reproduced belows- "37. It is good fiscal policy not to put people in doubt and quandary about their liability to duty, when a particular product like V.P. Latex known to trade and commerce in this country and abroad is imported, it would have been better if the article is eonomine, put under a proper classifiction to avoid controversy over the residuary clause. As a metter of fact in the Red Book (import Trade Control Policy of the Ministry of Commerce) under Item 150, in Section II, which relates to "rubber, raw and gutta percha raw", synthetic latex including vinyl pyridine latex and copolymer of styrene butadiene latex are specifically included under the sub-head "Synthetic Rubber". We. do not see any reason why the same policy could not have been followed in the I.C.T. book being complementary to each other. When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause, The question of competition between two rival classifications will, however, stand on a different footing." The Hon'ble Bombay High Court in the case of Chemicals and, Fibres India Ltd. v. Union of India reported in 1982 ELT 917 had held that the nature of products specified in item 15A(1) are highly technical and scientific in character and, therefore, the words user' therein will have to be given only the technical or scientific meaning. Adopting of any other method of construction will amount to wholly defeating the very purpose of making item 15A a comprehensive one. It was further held by the

Hon'ble High Court that item 15A of the Central Excise Tariff is not restricted to any other particular product but refers to a class of product. Para 25 at page 927 from the said judgment is reproduced below:- "25. Even a cursory reading of Item 15A of Schedule I to the Excise Act will show that it is not restricted to any one particular item, but it refers to a class of products such as artificial or synthetic" resins and plastic materials. This is further clear from the fact that the chemical processes are also referred to in Item 15A with reference to which the identity of the product has 'to be ascertained. We are mainly concerned in this petition with Item 15A(1)(i) and reading the main part of Item 15A(1) with clause (i), it is clear that the nature of the products specified therein are highly technical and scientific in character and, therefore, the words used therein will have to be given only their technical or scientific meaning. The different chemical processes like condensation, polycondensation, polyaddition, polymerization, co-polymerization is not language which is capable of being construed in a popular sense. Indeed it can be construed only in a scientific and technical sense. Adopting any other method of construction of the words used in item 15A, which are words which fall within the field of chemistry exclusively will amount to wholly defeating the very purpose of making Item 15A a comprehensive one."The Union of India and Ors. v. The Elphinstone Spinning & Weaving Mills Co. Ltd. reported in 1978 ELT 680 had held that even if wrong trade notices are issued still the Government cannot be estopped from convassing the true interpretation of the statute before a court of law as trade notices have no statutory effect. Para 9 from the said judgment is reproduced below :- "9. The main contention urged by Mr. Dhanuka learned counsel for the appellants before us in this appeal was that the stage or point of time at which the duty of excise is attracted by reason of the provisions of the said Act and the rules is not at the point of time of manufacture or production of goods but at a subsequent stage. In Mr. Dhanukas submission that subsequent stage in the present case was at the time when the goods were sought to be removed from the Mills' factory. To this contention a preliminary objection was taken by Mr. Parekh learned counsel for the respondents. That preliminary objection was that the construction now sought to be placed upon the said Act and rules on behalf of the appellants ran counter to othe two trade notices we have earlier referred to. This undoubtedly is true, but if the construction convassed before us by Mr.

Dhanuka is correct, the appellants cannot be precluded from putting it forward.

The trade notices have no statutory effect. It is a matter of regret that senior officers of the Government should have put forward before the trade wrong interpretation of the Act, but that cannot be held to estop the appellants from canvassing the true interpretation of the statute." The Chemical Examiner of the Central Excise Laboratory, Bombay has gone much beyond his role in observing that the "actual uses of the product may be ascertained before finalising assessment". He should have only confined to the chemical composition of the sample. The learned Advocate has cited a number of judgments as to the binding effect of the tariff advice but in the present matter the argument of othe learned Advocate for the respondents is not tenable in view of the specific entry in tariff item 15A. We have already given our observations that whenever there is a specific entry under a particular tariff item, the item will fall in the specific entry than in the general entry, keeping in view the Hon'ble Supreme Court's judgment in the case of Dunlop India Ltd. and Madras Rubber Factory Ltd. v. Union of India and Ors. reported in 1983 ELT 1566. Accordingly we hold that the product "Diakanol AMH" is correctly classifiable under tariff item 15A(i) of the Central Excise Tariff. In the rersult the Revenue's appeal is allowed.

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