

Pacific Exports Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-17-1986

Reported in : (1987)(11)LC273Tri(Delhi)

Appellant : Pacific Exports

Respondent : Collector of Customs

Judgement :

1. M/s. Pacific Exports, Bombay has filed an appeal being aggrieved from order in appeal No. S/49-218/82-R dated nil despatched on 31.12.1982 passed by the Collector of Customs (Appeals), Bombay.

2. Briefly, the facts of the case are that the appellant had imported liquid paraffin and had claimed it to be a medicinal product falling under item 68 of Central Excise Tariff and in terms of Notification No.55/75-C.E. no C.V. Duty was payable on the same. The appellant had filed a refund application before the Assistant Collector of Customs.

The same was rejected on the ground that the import documents did not indicate that the goods were of pharmaceutical standards and as such the benefit of notification could not be extended to the subject goods.

Being aggrieved from the aforesaid order the appellant had filed an appeal before the Collector of Customs (Appeals), Bombay. The learned Collector had rejected the appeal on the ground that the importer did not mention on the Bill of Entry that

the goods imported were Pharmaceuticals. There was no such mention on the indent and the certificate did not show it to be of pharmaceutical standard or any drug standard. He had rejected the appeal. Being aggrieved from the aforesaid order the appellant has come in appeal before the Tribunal.

3. A notice of hearing was duly sent to the appellant by registered A.D. post and the appellants have sent their written submissions vide letter dated 27.8.1986 and have pleaded that the appeal may be allowed on the basis of the written submissions.

4. Shri R.S. Rajan, JDR, has appeared on behalf of the respondent. He has referred to the orders passed by the lower authorities. He has pleaded that the judgments cited by the learned Advocate in the case of Nav Bharat Enterprises (P) Ltd., New Delhi, v. Collector of Customs, Madras and in the case of Savita Chemicals (P) Ltd., & Sudershan Chemicals (1) Ltd. v. Collector of Customs, Bombay reported in 1983 ELT 1134 and 1985 ECR 336 respectively are not applicable and are distinguishable. The importers are not the actual users of the imported item. He has pleaded for the dismissal of the appeal.

5. We have heard both the sides and have gone through the facts and circumstances of the case. The Assistant Collector had rejected the claim on the ground that on the import documents there was no mention that the goods were of pharmaceutical standard and as such the benefit of notification could not be extended to the subject goods and the Collector of Customs (Appeals) had also rejected the same on the same ground as there was no claim that the goods were of pharmaceutical standard on Bill of Entry, indent and even the certificate referred by the appellant did not show that the goods were of pharmaceutical standard or of any drug standard and he had declined benefit of Notification No. 55/75. The appellant can have the refund of C.V. Duty only on the ground that the liquid paraffin was of pharmaceutical standard and was exempt from payment of C.V. Duty as per S.No. 19 of notification No. 55/75. An extract from the notification is reproduced below :- In exercise of the powers conferred by Rule 8(1) of the Central Excise Rules, 1944 the Central Government hereby exempt goods of the description specified in the Schedule annexed hereto, and falling under item No.

68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon.

19. All drugs, medicines, Pharmaceuticals and drug intermediates, or elsewhere specified." In the written arguments filed by the appellants, the appellants have referred to the judgment of the Tribunal in the case of Nav Bharat Enterprises (P) Ltd. v. Collector of Customs, Madras reported in 1983 ELT 1134 where the issue involved was whether liquid paraffin was liable to duty under item 8 or item 11A or item 68 of the Central Excise Tariff. The Tribunal had come to the conclusion that the goods which on test were found to have a flame height of less than 10 mm, but had a viscosity of less than 100 seconds by Red Wood 1 Viscometer at 100F and which were free from bituminous substance were assessable to duty under Item 8 of the Central Excise Tariff and the other goods which on test were found to have a flame height of less than 10 mm and viscosity of more than 100 seconds at 100F by Red Wood I Viscometer and were free from bituminous content, would not qualify for assessment under Item 8 nor under Item 11A *ibid* but under Item 68 of the Central Excise Tariff. In the other judgment cited by the appellant viz. in the case of Savita Chemicals (P) Ltd. & Sudarshan Chemicals (1) Ltd. v. Collector of Customs, Bombay reported in 1985 ECR 336, the Tribunal has confirmed its earlier view. We have gone through the Bill of Entry, indent and other documents incorporated in the paper book filed by the appellant. Nowhere the appellant has been able to establish that the goods were of pharmaceutical standard. In the present matter there is no dispute as to its falling under Tariff Item 68. The certificate of analysis issued by Witco International at page 23 of the paper book does not have any mention that the imported goods are of pharmaceutical standard. In the result we uphold the findings of the lower authorities. The appeal filed by the appellant is dismissed.

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