

**Commissioner of Customs Vs. Jaysons Hard Metals Pvt. Ltd.**

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

**Decided On :** Apr-08-2003

**Reported in :** (2003)(155)ELT193Tri(Mum.)bai

**Judge :** S T Gowri, G Srinivasan

**Appellant :** Commissioner of Customs

**Respondent :** Jaysons Hard Metals Pvt. Ltd.

**Judgement :**

1. The question for consideration in this appeal by the Commissioner is whether cold galvanising compound, the product imported by the respondent, is consumer goods and therefore requires a licence for its importation. The Deputy Commissioner has held the goods to be consumer goods. His view was overturned by the Commissioner (Appeals) on appeal by the importer.

2. The product, manufactured by ZRC Products Company of the USA, is stated in the catalogue of the manufacturer to be cold galvanizing compound, a liquid containing 95% zinc in the dried film that bonds to clean iron, steel or aluminium through electrochemical action to provide maximum protection against rust and rust creepage. Among the applications are stated to be: in place of hot-dip galvanizing, to repair damaged hot galvanizing, to regalanize worn hot-dip surfaces, to protect weldments and to repair.inorganic zinc surfaces. Some of the applications given in the brochure are offshore rigs, long-term protection in any fabrication of metal, manufacturing bridges, parabolic antennas, nuclear plants,

transmission towers, industrial maintenance, public projects, such as bridges, construction of buildings, tanks, water and waste plants.

3. Part of the goods which were imported were in aerosol cans, the remaining being in drums or jars. The notice issued to the appellant read, "On examination, it was noticed that the goods imported were in consumer packing. The goods were therefore imported in consumer packing and readily go satisfying the needs of industrial consumers". This is the basis for holding the goods to be consumer goods. In his order, the Deputy Commissioner has quoted the definition in the policy of consumer goods to mean "any consumption goods which can directly satisfy human needs without further processing". He has said that preventing or resisting corrosion satisfies a human need; in respect of large number of situations of commodities, they can appear to be consumer goods. He has relied upon the judgment of the Bombay High Court in *United Breweries Ltd. v. UOI* - 1994 (53) ECR 13. The Commissioner (Appeals) has cited the definition of the term "consumer goods" in the Black Law Dictionary and said that since the goods do not find use in the domestic situation, these are only meant for industrial use and they are not consumer goods.

4. The departmental representative essentially relies upon the Bombay High Court's judgment cited above to say that the fact that the goods may have industrial application does not retract their being considered as consumer goods.

5. We must keep in mind the basis alleged in the notice which covered the proceedings issued holding the goods not to be consumer goods and that they were in "consumer packing". We are not clear what this term "consumer packing" means. We do not think that merely the goods are packed in a particular manner, they become consumer goods. Their manufacturer's literature itself indicates that the product is available in aerosol cans because it is easy to use, convenient for smaller jobs, such as coating welds or touch-up of damaged hot-dip galvanizing, it is ideal for hard-to-reach spots. We do not find it possible to accept that the aerosol packing is only meant for packing consumer goods. We fail to understand why an industrial product cannot be in consumer cans. This alone should be enough to dispose of the appeal. Apart from this, the definition in the policy of

consumer goods has to be read pragmatically and it is not enough to say, as the Deputy Commissioner says, that a particular commodity is consumer goods because it satisfies a human needs. If that is the case, one could say that nuclear reactor is consumer goods because it satisfies human needs. For nuclear reactor, a space satellite is consumer goods because it satisfies the need for human beings to travel in space and so on.

Such an absurd interpretation cannot be permitted the definition has to be ready pragmatically so as to say that it is only those that are required for satisfaction of recognised human needs, such as the need for food, etc., that are consumer goods. The manufacturer's catalogue does not suggest a single use of the goods home by a human being to satisfy his needs. It is difficult to contemplate of an average human being's external, mental or physical needs being satisfied by galvanising.

6. The judgment of the Bombay High Court in *United Breweries Ltd. v. UOI* - 1994 (53) ECR 13 does not lead to the interpretation that any product can be considered to be consumer goods. The court was concerned with whether sodium vapour lamps, which were intended to be used for street lighting in airport and stadium were consumer goods. It rejected the contention of the importer that only those goods which are used in the household are consumer goods. The reason underlying the judgment appears to be that lighting on such places as streets, stadia, etc., satisfy the human need for lighting and visibility. It has noted that such lamps should be distinguished from studio and projection lamps which are highly specialised in use. The ratio of that judgment would therefore not apply to the facts before us. We therefore do not find any ground to interfere.

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