**Collector of Central Excise Vs. Indian Oil Corpn. Ltd.**

**Collector of Central Excise Vs. Indian Oil Corpn. Ltd.**

**SooperKanoon Citation** : sooperkanoon.com/31247

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

**Decided On :** Jun-17-2003

**Reported in** : (2003)(157)ELT41TriDel

**Judge** : A T V.K., P Chacko

**Appellant** : Collector of Central Excise

**Respondent** : Indian Oil Corpn. Ltd.

**Judgement** :

1. In this Appeal, filed by the Commissioner, Central Excise, the issue involved is whether the Light Aluminium Rolling Oil (LARO) is classifiable under sub-Heading 2710.29 of the Schedule to the Central Excise Tariff Act as confirmed by the Commissioner (Appeals) under the impugned Order or under Sub-Heading 2710.99 as claimed by the Revenue.

2. Shri V. Valte, learned senior Departmental Representative submitted that Heading 2710.20 is specific with reference to the products (a) Kerosene which is ordinarily used as an illuminant in oil burning lamps and (b) aviation turbine fuel; that the specifications of LARO are different from the specifications of kerosene; that LARO is a product which is derived from kerosene by a special process in a separate plant and has a distinct use as rolling oil in aluminum industry; that kerosene fraction of higher boiling point is separated and then distilled or processed further in a separate plant; that LARO is also not a product which is ordinarily used as an illuminant in oil burning lamps; that as per I.S. Specification

1459-1974, the requirements for kerosene have been specified as under: The learned Senior Departmental Representative, further, mentioned that the characteristics of LARO are as under: 2.2. He, therefore, contended that as the distillation range of LARO is above 220C as against the specification for kerosene-below 200C, the impugned product can not be regarded as kerosene.

3. Countering the arguments, Ms. D. Lilly, General Manager Finance of M/s. Indian Oil Corporation Ltd., submitted that the scope of sub-Heading 2710.20 is identical to that of the Tariff Item 7 of the Old Central Excise Tariff; that the impugned product was assessed under Item 7 before 28.2.1986 when the Present Tariff came into operation; that both under Item 7 and sub-Heading 2710.20, the specifications for kerosene are same i.e. (i) smoke point 18 MM or more, (ii) final boiling point not exceeding 300C; that since the impugned product LARO confirms to these specifications, it is classifiable under sub-Heading 2710.29 as "Other" not being kerosene or Aviation Turbine Fuel (ATF) against 2710.99 which is only for residuary products and cannot be applied to the goods having specific identifiable characteristics. She also emphasized that LARO is nothing but a fraction of kerosene which meets all the specifications mentioned in the sub-heading 2710.20; that the onus is on the Excise Authorities to prove that LARO cannot be classified under sub-Heading 2710.29; that it has been held by the Supreme Court in the case of Dunlop India. 1983 ELT 1566 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 it to the residuary items." 4. She also submitted that phrase "that is to say" mentioned in the Heading expands the scope of the relevant entry so as to include within its ambit not merely kerosene which is ordinarily used as an 'illuminant in oil burning lamps' and ATF, but also any hydrocarbon oil (excluding mineral oil and turpentine substitute) which has a smoke point of 18 mm or more and has a final boiling point not exceeding 300C; that these identifiable tests could be applied to any hydrocarbon oil for determining classification under 2710.29. She relied upon the decision in CCE, Bombay vs. Reliance Industries Ltd., 2000 (119) ELT 26 (T-LB) wherein the Larger Bench of the Tribunal has held that words "that is to say" was "apparently meant to exhaustively enumerate the kind of oil falling within the category of kerosene and aviation turbine fuel ..... Enumeration of various kinds of

oils coming within the category of kerosene and aviation turbine fuel can be any hydrocarbon oil having a smoke point of 18mm or more or has a final boiling point not exceeding 300C. Reliance has also been placed on the decision in CCE, Vadodara vs. Indian Petochemicals Corporation Ltd., 1990 (46) ELT 173(T) wherein Heavy Normal Paraffins was classified under Item 7.

5. We have considered the submissions of both the sides. We observe that the Commissioner (Appeals) in the impugned order has given a specific finding that "there is no dispute on facts and in particular the Assistant Collector has conceded in his order that LARO has a smoke point above 18 mm and has a final boiling point not exceeding 300C".

The relevant Heading reads as under: "-- Kerosene (which is ordinarily used as an illuminant in oil burning lamps) and aviation turbine fuel, that is to say, any hydrocarbon oil (excluding mineral colza turpentine substitute) which has a smoke point of eighteen millimeters or more and has a final boiling point no exceeding 300C: Sub-heading 2710.29 mentions "Other" and not 'kerosene". This is because the Heading covers within its ambit kerosene and ATF that is to say any hydrocarbon oil having a smoking point 18mm or more and having a final boiling point not exceeding 300C. The phrase "that is to say" has been interpreted by the Larger Bench of this Tribunal in the case of Reliance Industries Ltd. by holding that "This expression was apparently meant to exhaustively enumerate the kinds of oil falling within the category of kerosene and ATF. In the said decision, the issue related to classification of 'Heavy Normal Paraffin' (HNP) and the rival sub-Heading like the present matter were 2710.29 and 2710.99 and the issue referred for the consideration of the Larger Bench was whether Heavy Normal Paraffin is to be classified under 2710.99 as it is a product different from kerosene. The Larger Bench observed that "Any hydrocarbon oil, which satisfy these physical properties, will fall within the tariff sub-Heading 2710.19...... It is common case that HNP is a hydrocarbon oil. It is also the admitted case that HNP has a smoke point of eighteen millimeters or more and has a final boiling point not exceeding 300C.... It is to be classified under 2710.29......" In the said matter also the contention of the Revenue was that HNP was not known as kerosene in the common parlance and therefore it would not fall within the category of kerosene as defined in Chapter 27.

The Larger Bench did not agree with the said submission of the Revenue by holding as under: "Kerosene and aviation turbine fuel are defined in the new tariff.

As per the definition these should take in any hydrocarbon oils other than mineral colza oil and turpentine substitute which satisfy the physical properties mentioned therein. Department was not placed before us any data showing that any oil other than hydrocarbon oil which satisfy the physical properties is known in the common parlance as kerosene oil or aviation turbine fuel. Therefore, the definition of kerosene and aviation turbine fuel in Chapter 27 takes within its ambit any hydrocarbon oil other than mineral colza oil and turpentine substitute which has a smoke point of 18 millimeters or more and has a final boiling point not exceeding 300C".

6. As LARO satisfies the specifications enumerated in the Heading 2710.29, following the ratio of the Larger Bench of the Tribunal in Reliance Industries case, we do not find any reason to interfere with the findings of the Commissioner (Appeals) and reject the Appeal.