

Basf India Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-13-1983

Reported in : (1983)LC780DTri(Delhi)

Appellant : Basf India Ltd.

Respondent : Collector of Customs

Judgement :

1. These are four Revision Applications (hereinafter called "appeals") filed before the Central Government, which under Section 131B- of the Customs Act, 1962, stand transferred to this Tribunal to be disposed of as if they were appeals presented before the Tribunal. As the four appeals involve similar issues, they are dealt with in a common order.

2. In this case, notices of the hearing date(s) were issued to the appellants at the Bombay address given in their revision application; to BASF(India) Ltd., New Delhi, which appeared to be a connected office of the appellants; to Bakshi Shiv Charan Singh, Advocate, through whom the appeals were filed, and in whose favour the appellants had originally executed 'vakalatnamas'; and to Shri Y. N. Chopra, Consultant, in whose favour the appellants subsequently executed a joint 'vakalatnama'. None of these notices evoked any response.

3. When the case was called on 5.5.1983, there was again no one present on behalf of the appellants. The Bench accordingly decided to proceed with the hearing of the case. However, since no copies of documents had been received,

the Senior Departmental Representative requested that she might be given an opportunity to go through the documents which were on the Tribunal's record, and that the cases might be taken up thereafter. This was agreed to and the cases were accordingly taken up for hearing today.

4. All these cases relate to the classification of four substances, namely, (i) Basyntan FCBJ4/BASF, (ii) Basyntan FCBJ6/BASF, (in) Basyntari VG/BASF, and (iv) Basyntan PC Powder BASF, which were imported by the appellants. This was at a time when the Indian Tariff Act, 1934 was in force- The appellants claimed assessment of the goods under Item 13 of the old Customs Tariff Schedule, which covered "Dyeing and tanning substances, all sorts, not otherwise specified". This classification was, however, not accepted by the Customs authorities, who instead assessed the goods under Item 87 of the Customs Tariff Schedule, as "All other articles not elsewhere specified".

5. The appellants accordingly filed refund claims, which were rejected by the Assistant Collector. The reasons given for rejection are very brief. According to the Assistant Collector, out of the four items, one is "a re-tannin for chrome leather and pre-tannin for vegetable leather", two are "bleaching tannins", and the fourth is "a pre-tannin for leathers to be vegetable tanned". He observed that these could not be regarded as tanning substances, as they were not complete replacement syntans, playing an active role in actual tanning of skin to give leather. He accordingly rejected the refund claims. The appeals filed to the Appellate Collector against these orders were also rejected. Three of the appellate orders contained no reasoning whatsoever, but merely said that the order appealed against was clear, that the assessment of the goods was in order and that the appeal was rejected. The remaining Order-in-Appeal is a little more detailed, but only to the extent of reproducing what had been stated by the Assistant Collector, and then rejecting the appeal. It is against these orders that the appellants have filed revision applications, which now stand transferred to the Tribunal.

6. In the appeal, it has been argued that the description in Item 13 of the Customs Tariff Schedule includes the words "all sorts", that these words are very important and that they preclude any distinction being drawn between "bleaching tannins",

"pre-tannins" and "re-tannins". It is submitted that so long as the goods are "tanning substances", the words "all sorts" render them liable to duty under Item 13 of the Customs Tariff Schedule.

7. It is also submitted that the primary use of the substances imported was for tanning. It has been stated that their tan content is taken into account whilst calculating the total tans required for the tanning operation. In other words, even though they may not contain or contribute as much of tans as the substances used in the main tanning stage, they do contain and contribute smaller amount of tans.

8. The appellants, enclosed letters from six firms, who they claim are the principal leather manufacturers of India. These are generally to the effect that all the process from the so-called "pre-tanning" till the so-called "bleaching with tannins" are known as tanning operations, as all these processes are exploited in converting raw hides into leather. In addition, the appellants have produced a letter No.3/C-51/66-67/ CDN-I/3646 dated the 8th February, 1968, issued by the Assistant Collector of Imports for Jt. Chief Controller of Imports and Exports, Bombay, in which it is stated that "Basyntans" can be considered as tanning materials covered by S. No. 6-V of the I.T.C.Schedule.

9. As against these arguments, Smt. Zutshi, for the Department, stressed that the goods were not "complete replacement syntans". She cited the Encyclopaedia of Chemistry, by Harpell & Hawley, Third Edition, in which there is a definition of "tanning agent", which does not appear very relevant to the present issue. She also cited a publication "Leather Auxiliaries and Chemicals" by Small Business Publications, in which, under the heading "Synthetic tanning agents", there is a description of "Syntans" as synthetic agents used in combination with other tanning agents.

10. We find that neither the Assistant Collector nor the Appellate Collector has given any justification for the view taken that the goods under consideration are "pre-tannins" or "re-tannins", and are therefore not eligible to be considered as "dyeing and tanning substances, all sorts", and that the latter expression would cover only substances which are "complete replacement syntans playing an active role in actual tanning of skin to give leather". While making such a distinction, they

could well have been expected to say something more by way of justification, without which what they have said remain as mere pronouncements. It appears that these decisions are based on certain internal notes of the Chief Chemist and the Deputy Chief Chemist, Central Revenues, which were circulated by the Central Board of Excise and Customs. It need hardly be said that the quasi-judicial orders passed by the Assistant Collector and the Appellate Collector should have been self-contained and speaking orders, and in regard to technical points should have indicated the authorities relied upon. We find considerable force in the argument of the appellants that there is no justification for drawing a distinction between different substances used in the process of tanning, and for confining the expression "tanning substances" to what are called "complete replacement syntans", particularly as the relevant Tariff Item is qualified by the words "all sorts". We find from a letter of the Collector of Customs, Calcutta, which is on the record, that these syntans have been found to be synthetic tanning materials widely used in the tanning industry, which enjoy high reputation as tanning substances in the production of various kinds of leather. It is further stated that these synthetic tanning substances have no other use than tanning. The local Deputy Chief Chemist is stated to have opined that while considering tanning as an entire process, there cannot be any segregation into pre-tan, re-tan or after-tan stages.

11. It is also seen from the record that prior to the issue of the Board's advice there was a long-established practice of assessing the same goods to duty under Item 13 of the Customs Tariff Schedule. Due weight should also be given to the opinion of the Assistant Controller of Imports, to the effect that basyntans can be considered as tanning materials.

12. We observe that of the two references cited by the Senior Departmental Representative at the hearing, one has no direct application to the present case, as it deals generally with the nature of "Synthetic tanning agents", whereas the Tariff Item refers to "Synthetic tanning substances", which expression could have a wider scope. The second reference, in the publication "Leather Auxiliaries and Chemicals", actually supports the case of the appellants, first by including "syntans" under the heading "synthetic tanning agents", and secondly by describing them as "synthetic agents", used in combination with other tanning

agents. The use of the word "other" indicates that syntans are also regarded as tanning agents.

13. For all these reasons, we consider that the decision of the lower authorities in these cases is not sustainable, and the goods in question deserve to be classified under Item 13 of the (old) Customs Tariff Schedule. We accordingly set aside all the four Orders-in-Appeal and direct that the goods in each case be re-classified under Item 13, *ibid* and consequential relief given to the appellants.

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