

Sampre Nutritions Ltd. Vs. C.C.E.

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SooperKanoon Citation : sooperkanoon.com/34973

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Apr-16-2004

Reported in : (2004)(169)ELT42Tri(Bang.)

Judge : K Usha, N T C.N.B.

Appellant : Sampre Nutritions Ltd.

Respondent : C.C.E.

Judgement :

1. Appellant manufactures "Vicks Vitamin C Orange/Mango Drops" as job work for Procter & Gamble India Ltd. The wrapper states the following about the item and its contents : CONTAINS ADDED FLAVOURS AND PERMITTED COLOURS Mfd. By Procter & Gamble The appellants were classifying the item under Chapter sub-heading 17004.90 of the Central Excise Tariff and discharging Central Excise at the rate applicable under such sub-heading. In the present proceeding, that classification has been overruled and it has been held that the products are classifiable under Chapter sub-heading No. 2936.00 and are liable to duty at a higher rate as applicable to that sub-heading.

consequently, there is duty demand of about Rs. 8 lakhs. The present appeal challenges the classification order.

(1) 17.04 - Sugar confectionery (including white chocolate), not containing cocoa
1704.10 - Gums, whether or not sugar Coated (including chewing gums, bubble

gum and the like) 1704.90 - Others (2) XL PROVITAMINS, VITAMINS AND HORMONES 29.36, 2936.00 - Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent.

3. The lower authorities have held that the product is advertised and sold as Vicks Vitamin C Orange/Mango Tablets, and that the consumption of these tablets (10 a day) would reach the consumer the recommended daily dosage of 250 mg of vitamin C. The lower authorities have also noted that Central Excise classification must be based on the commercial understanding of the product and that the goods are invoice and sold as vicks vitamin C orange/mango tablets.

4. As against the findings of the lower authorities, the appellant's emphatic contention is that the product in question is only a sugar confectionery and is manufactured and sold as such. They point out that by way of composition sugar constitutes almost 97% and vitamin C/ascorbic acid is only 0.0189%. The detailed composition as stated is reproduced below :
Ingredients % w/w
Ascorbic Acid 0.0189
Sodium Ascorbate 1.1035
FD & C Yellow Colour 0.0024
Mango/Tangerine Flavour 0.3500
Citric Acid Anhydrous 0.2000
Purified Water 1.7500
Candy Base (Sugar) 96.5752
Total 100.0000

5. The appellants also point out that the ingredients and dosages as mentioned above would not be acceptable for treatment for vitamin C deficiency. They point out that according to the Indian Pharmacopoeia a daily dose of 250 mg is recommended for vitamin C. It is further being contended that the addition of vitamin C is only to provide flavour and taste. In this context, they point out that it is common that food products are enriched with vitamins, proteins, carbohydrates and minerals as in the following examples :
(a) Cadbury's Bournvita enriched with proteins, carbohydrates, vitamins and minerals
(b) Glaxo's Glucose 'D' and Glucon 'C' enriched with Vitamin 'D' and 'C' respectively are classified under Chapter sub-heading 17 of the CETA.
(c) Gluconvita Glucon D enriched with Vitamin 'D' is also classified under Chapter 17 of the CETA.
(d) Logenges, similar to the product in question, enriched with Vitamins or otherwise are also classified under Chapter sub-heading 1704.90 of the CETA. The appellants point out that such enrichment with vitamins do not change the basic character and use of the food products. Another point made by

the appellant is that the goods in question are produced under Foods Act and Rules and not under Drugs Act and a drug licence.

Appellants also point out that Food Act and Rules specifically permit the addition of vitamin and mineral to confectionery within small percentage. The appellants also produced a copy of licence issued to them under APPFA Rules, 1990.

6. We have perused the records and considered the submissions made by both sides. We are of the opinion that the real identity of the product in question is as sugar confectionery and not as vitamin C. All the materials on record point in the direction of sugar confectionery. To begin with, the wrapper described it as "SUGAR BOILED CONFECTIONERY".

Similarly, the composition of the item is dominated by sugar at 97%.

The percentage of vitamin C is only 0.0189 and at this level, according the Revenue authorities themselves, a person has to consume 10 tablets per day to reach the recommended dose of 250 mg per day. Hardly, a convenient and advisable method of delivery for vitamin C. Maybe, if this method is adopted, it would cost serious side effects on account of consumption of large quantities of sugar. It is also relevant that the product in question is manufactured under Food licence and not under Drug Licence. Further, Food rules take note of addition of small doses of vitamin so as to enrich food products. In the product in question also, the added vitamin is very small. The appellants have rightly pointed out that this is a common practice with regard to many food items like biscuits. They are right in their contention that such enrichment would not alter the identity, character and uses of the product. Dosage is the essence. This is recognized in the Central Excise Tariff also. Heading 2936.00 itself speaks of provitamins....

"used primarily as vitamins.... " (emphasis added). The highlighted words in the Tariff Heading brings home this point. The item should be primarily used as vitamins to fall under 2936. That is not the case here.

7. In the view we have taken above, the appeal succeeds and is allowed with consequential relief to the appellants.

