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Commissioner of Central Excise Vs. Vinod Kumar and Bros. (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-21-2004

Reported in : (2005)(100)ECC139

Judge : N T C.N.B., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Vinod Kumar and Bros. (P) Ltd.

Judgement :

1. In the above captioned appeals filed by the Revenue against the impugned Order-in-appeal, the controversy relates to the question as to whether the products in dispute are classifiable under Chapter Heading 9.03 (as spices) or under Chapter Heading 2108.99 (as edible preparations not elsewhere specified or included). The name of the products, their components and processes undertaken are detailed as under :- Dry mango, pepper, cumin, dry ginger, akarkara, salt, black salt, citric, etc.

Pomegranate, pepper, cumin, akarkara, dry ginger, dry mango, large cardamom, rose petals, salt, sugar, citric, etc.

Pomegranate, pepper, cumin, akarkara, dry ginger, dry mango, large cardamom, rose petals, salt, sugar, citric, etc.

Pomegranate, pepper, cumin, dry ginger, dry mango, black salt, sugar, citric acid.

Pomegranate, pepper, cumin, akarkara, dry ginger, dry mango, large cardamom, rose petals, salt, sugar, citric, etc.

Pomegranate, pepper, cumin, akarkara, dry ginger, dry mango, large cardamom, cinnamon, celery, black salt, sugar, citric, etc. Asa foetid a, Pomegranate, akarkara, dry ginger, dry mango, salt, sugar, citric, etc.

Roasted cumin, dry mango cumin, salt, pepper, dry ginger, pepper long, citric, etc.

Roasted cumin, dry mango, cumin, salt, pepper, dry ginger, p'ep'per, black salt, sugar, etc.

Roasted cumin, dry mango, cumin, salt, pepper, dry ginger, pepper, black salt, etc.

Roasted cumin, cumin salt, pepper, dry mango, -dry ginger, black salt, etc.

Pepper long, akarkara, dry ginger, pepper, asafoetida cumin, dry mango, salt, black salt, nausadar, sugar, citric etc.

Pepper long, akarkara, dry ginger, pepper, cumin, dry mango, salt, black salt, nausadar, citric, etc.

Pepper long, akarkara, dry ginger, pepper, cumin, dry mango, salt, black salt, nausadflr, citric, etc.

Asafoetida, akarkara, dry ginger, pepper, cumin, dry mango, salt, nausadar, citric food colours, etc.

Asafoetida, akarkara, dry ginger, pepper, cumin, dry mango, salt, natisadar, citric food colours, etc. Asafoetida, akarkara, dry ginger, pepper, celery, salt nausadar, citric, sugar, etc.

Asafoetida, akarkara, dry ginger, pepper, celery, salt nausadar, citric, etc.

Dry mint, cumin, dry ginger, pepper, celery, dry mango, salt, nausadar, citric, etc.

Akarkara, dry ginger, pepper, dry mango, salt, black salt, pepper long, nausadar, etc.

Asafoetida, pepper long, dry mango, pepper, dry ginger, salt, black salt, citric, etc.

Dry mango, termelia chevula, amla, celery, nausadar, akarkara, salt, black salt, citric, etc.

Dry mango, termelia chevula, amla, celery, nausadar, akarkara, salt, black salt, citric, etc.

2. The respondents have claimed classification of these products under Heading 9.03 by relying upon the definition of 'Spices' as given under Chapter Note 3 to Chapter 9. Whereas the Revenue has sought the classification of these items under Chapter Heading 2108.99, being edible preparation, not elsewhere specified or included and not even covered by the definition of Spices as given in the above said Chapter Note to Chapter 9.

3. The expression 'Spices' has been defined under Chapter Note 3 to Chapter 9 as under :- "Heading No. 9.03 covers spices, a group of vegetable products (including seeds, etc.), rich in essential oils and aromatic principles, and which, because of their taste, are mainly used as condiments. These products may be whole or in crushed or powdered form. The addition of other substances to spices shall not affect their inclusion in this heading provided the resulting mixtures retain the essential character of spices included in this heading.

The heading also includes product commonly known as "Masalas".

4. From this definition of "Spices", it is evident that the same must be used as condiments. The expression "Condiment" has not been defined in this Chapter Note 3 or in other Note to Chapter 9. Therefore, its dictionary meaning has to be referred. In the Book, "Words and Phrases, Permanent Edition, West Publishing Co., it had been defined as under :- "A condiment is something used to give a relish to food and to gratify the taste, usually a pungent and appetizing substance as pepper or mustard seasoning".

5. In New Encyclopaedia Britannica, 15th Edition, the expression "Con- "Condiment" has been defined as under :- "Condiment - These are single ingredients or blends of flavourful (something exotic) foods spices, and

seasonings, some of which may have been derived by fermentation; enzyme action, roasting or heating. They are usually designed to be added to prepared food at the table".

6. Similarly, in Webster's New Encyclopeadic Dictionary, it had been defined as under: - "Condiment - Something used to give appetizing taste to food; especially a pungent seasoning".

7. From the above-referred definitions, it is quite evident that a condiment is a substance used either during the preparation of food or it is added to the prepared food on the table in order to add a certain flavour or a taste. It has, thus, an integral relation to the food prior to its consumption. The argument of the ld. Counsel that since the disputed products, had been prepared from the mixture of various spices, detailed in the above referred table, and the mixture retained the essential character of the spices, are classifiable only under Heading No. 9.03, cannot be accepted. Mere use of some of the spices, in the preparation of the products in question, is not enough to conclude that these are 'spices'. To say that mixture so prepared from the spices while manufacturing the disputed products, retained the essential character of the spices, would not be justifiable in this case. The products in question are prepared by grinding and moisturisation process, in the form of tablets. These products are being marketed/sold by the respondents not as spices but as digestive tablets. None of these digestive tablets can be said to be a 'condiment', which is used either during the preparation of the food or is added to the prepared food on the table in order to add certain flavour or a taste. The digestive tablets cannot be called as 'spices'.

These are also never used as condiments in relation to the food at the time of cooking or thereafter. These tablets have in fact no integral relation to the food at the time of its preparation or after the preparation.

8. The classification of the products in question, detailed above, cannot be claimed by the respondents under Heading 9.03 as spices on the strength of their constituents. The theory of classifying a product on the basis of its constituents was not accepted by the Tribunal in Jalani Enterprises v. CCE, Jaipur - 2001 (132) E.L.T. 422 (Tribunal - Delhi)], wherein the product 'Jaljira' prepared by adding

some spices was sought to be classified under Chapter 9, but the Tribunal did not accept that classification and rather concluded that the product was classifiable under Chapter Heading 2108.99. The observation of the Bench in that case recorded in paras 7 and 8 reads as under :- "7. The appellants have, no doubt, alleged that the product 'Jaljira' was prepared by them from salt (40%), Kalanamak (1%), Nimbu Ka Sat (citric) (acid) (8%), Sonth (10%), Kalimirch (10%), Pudhina (10%), Hing (1%), Jira (18%) and Lalmirch (2%) but that itself is not enough to hold that Jaljira is a masala/spice especially when it is not even commonly known as such but rather it is known as drink,. It is well settled that the goods have to be classified accordingly to the popular meaning attached to them by those using the product as observed by the Apex Court in Shree Baidyanath Ayurved Bhavan Ltd. v. CC, Nagpur - 1996 (83) E.L.T. 492 (S.C.). Similarly in Novopan India Ltd. v. Collector - 1994 (73) E.L.T. 769 (S.C.) the Apex Court has observed that commercial/trade understanding is the true test for the classification of the goods and not what scientific books like Encyclopeadia Britannica, may say. This very view has been again reiterated by the Apex Court in Purewal Associates Ltd. v. CCE, 8. Viewed in this context, the product, 'Jaljira' although prepared by adding some spices, cannot be logically said to be 'masala' as it is never understood or taken/accepted/used or called as spice or condiment both in trade parlance as well as common parlance. It is always understood, as drink by the traders and consumers as it is mainly used as drink and not as spice/condiment".

9. Keeping in view the ratio of the law laid down in the above referred case, and by the Apex Court in the case relied upon by the Tribunal in that case, the products in question which are only digestive tablets, though prepared from the mixture of various types of spices, cannot be called 'spices', which are mainly used as condiments in the preparation of food. In common parlance or even in the trade/commercial understanding, these are not traded or purchased as spices. Even the respondents themselves are trading these products as digestive tablets and not as spices. The Tribunal in the case of CCE, Jaipur v. Jain Products [decided by Order No. 70/04-B, dated 18-12-2003 = 2004 (165) E.L.T. 47 (T)], has held the classification of digestive tablet called "Churan Goli" not under Heading 9.03 as 'spices' but under residuary Heading 21.08.Mahashian Di Haiti (Pvt.) Ltd. v. CCE, New Delhi [1999 (105) E.L.T. 589 (Tribunal)], referred by the ld. Counsel,

wherein 'red chilli powder' and 'Amchur' have been held to be classifiable under Chapter 9, is not attracted to the facts of the present case as both these products even in the common parlance/trade are known as spices. These are also used as spices in the preparation of the food. But none of the products in question is used as such.

11. There is no dispute with the observations of the Apex Court in Indian Metals & Ferro Alloys Ltd. v. CCE [1991 (51) E.L.T. 165 (S.C.)] and CCE, Hyderabad v. Fenoplast (P) Ltd. [1994 (72) E.L.T. 513 (S.C.)] "that trade understanding of an article would be decisive factor only for classification purpose, when the words-in-question are not defined in the Act and that an article would be classifiable under residuary Heading only if it was not classifiable under specific Heading of the Tariff". But no advantage out of this principle of law can be claimed by the respondents for seeking classification of their products in question under Chapter Heading 9.03, in the light of the facts and circumstances, detailed above. The Board's Circular No. 205/39/96-CX, dated 30-4-1996 regarding the classification of Indian Traditional convenience food mixes, masalas and condiments under Chapter 9 or 21 is also not of any help to the respondents. In that Circular, it has been clarified that Heading No. 21.08 of the CET is a residuary entry and it should be invoked if the product is not found to be classifiable under Chapter 9 of the CET. In the instant case, the products in question are not classifiable under Chapter Heading 9.03 as spices. These are classifiable only under Chapter Heading No. 2108.99.

12. In the light of what has been discussed above, the impugned order of the Commissioner (Appeals) classifying the products in question under Chapter Heading 9.03 cannot be legally sustained and is set aside. Consequently, the appeal of the Revenue is accepted.

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