

Collector of Customs Vs. N. Kumar

Collector of Customs Vs. N. Kumar

SooperKanoon Citation : sooperkanoon.com/3663

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-14-1987

Reported in : (1987)(13)ECC180

Appellant : Collector of Customs

Respondent : N. Kumar

Judgement :

1. The goods in respect of which the present dispute has arisen is a product called "Prosobee" baby food. They were assessed to Customs duty under Heading No. 21.01/07 of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as 'The Schedule'). After clearance of the goods, the respondent filed claims for re-assessment of the goods under Customs Notification No. 142, dated 2.8.1976 and Notification No. 200, dated 2.8.1976. The claims were rejected by the Assistant Collector but allowed in appeal by the Appellate Collector and hence the present appeals by the Collector of Customs.

2. We have heard Shri Vineet Kwnar, Sr. D.R., for the appellant and Shri P.R. Dastidar, Consultant, for the respondent.

3. A preliminary objection was raised by the respondent as to the maintainability of these appeals on the ground that the Collector had not authorised the Assistant Collector to file the present appeals on his behalf. We had accordingly directed the Sr. D.R. to produce the Collector's file for our perusal. On the adjourned date of hearing, this file was perused by us and also by Shri Dastidar. The Bench was

satisfied that there had been substantial compliance with the provisions of Section 129A(2) of the Customs Act and accordingly directed both sides to submit arguments on the merits of the dispute.

4. Customs Notification No. 142, dated 2.8.1976 exempts milk foods for infants and invalids, falling within Chapter 21 of the First Schedule to the Customs Tariff Act, 1975, from the whole of the basic duty of Customs leviable thereon (the term basic duty means, in this Order,, the duty leviable in terms of the Schedule). Customs Notification No. _ 200, dated 2.8.1976, as amended by Notification No. 147, dated 9.7.1977, exempts inter alia milk foods for infants and invalids, canned or bottled, falling within Chapter 21 of the aforesaid Schedule from the whole of the basic duty of customs leviable thereon.

5. As the Assistant Collector has recorded in his order, "Prosobee" baby milk food is a milk free formula powder with Soy Isolate. It is a lactose free formula containing isolated soy protein supplemented with L-Methriomine. It contains no milk or milk products. It is used only for babies who are allergic or sensitive to milk.

6. The Assistant Collector rejected the contention that the goods were milk food because the product was milk free, milk being understood to be the opaque white fluid secreted by the mammary glands of female mammals for the nourishment of their young. The Assistant Collector held that Soyabean milk was not milk for the purpose of the notification. If it were milk, the Assistant Collector reasoned, there was no need for issue of Notification No. 143/76, which exempted, in terms, corn-soya milk and wheat-soya blend, when imported under the World Food Programme, from basic Customs duty in excess of the duty leviable on dried skim milk falling under Chapter 4 of the Schedule.

7. In appeal, the Appellate Collector held that the term milk should not be narrowly construed to mean only milk secreted by female mammals: but also milk derived from other sources such as coconut and soyabean.

She also held that a substitute for milk should also be covered by the term "milk food" in the two notifications. Accordingly, the Appellate.

Collector extended the benefit of the two notifications to the appellants as also the benefit of Central Excise Notification No.17/70.

8. The ground urged in the appeal memorandum is that the subject product, being a substitute for milk food, is not covered by Notification No. 142/76 or 200/76.

9. The respondent has filed what he calls a memo of cross-objections.

The Appellate Collector has extended full relief to the respondent. As such, there is no cause, or scope, for filing a cross-objection. It is, accordingly, dismissed as not maintainable.

10. In support of the appeal, the learned Sr. D.R. has cited passages from Kirk Othmer's Encyclopaedia of Science and Technology (Vol. 15, page 522 to 568) and submitted that milk contains lactose and protein.

The subject goods contain protein but no lactose and, hence, are not milk. He also relied on this Tribunal's decision in the case of Frozen Foods v. Collector of Central Excise, Pune, 1987 (27) ELT 195, holding that milk food should be exclusively or near exclusively made of milk.

It was not correct to say that milk substitute would be milk. Reference to Note 3 to Chapter 21 of the Tariff Schedule by the Appellate Collector was misplaced since what was to be considered was a notification and not an entry in the Schedule.

11. In reply, the learned Consultant for the respondent submitted that the Frozen Foods case (supra) was not relevant since that was with reference to an excise dispute where, unlike in the case of imported goods, common parlance test had a lot to do with classification of goods. The Consultant then profusely cited passages from G.P. Singh's 'Principles of Statutory Interpretation' (3rd Edition) and submitted that the Court must take that view which would effectuate the intention of the law (notification) and not stultify it. The reference to Customs Notification No. 143/76 by the Assistant Collector was irrelevant since the present was an import by an individual and not under the World Food Programme.

12. We have carefully considered the submissions of both sides. The Tribunal's decision in the Frozen Food case (supra) is not relevant to the present case. In that case, the product under consideration admittedly contained inter alia skimmed milk powder. In the present case, there is, admittedly, no milk in the sense of 'milk' as ordinarily understood -mother's milk, cow's milk, buffalo's milk, etc.

The ingredient which is called milk is milk derived from Soyabean.

However, in the Frozen Food case, it was noted that the expression "Milk food" (which figures in Customs Notification Nos. 142 and 200, dated 2.8.1976 which are relevant in the present case), has not been defined in the Excise Law. Nor does it seem to have been defined in the Customs Law.

13. We have, therefore, to turn to other sources. The Concise Oxford Dictionary, New Seventh Edition assigns inter alia the following meaning to the word "milk" :- "milklime juice of plants, e.g. in coconut, milklime preparation of herbs, drugs, etc." The following is found at p. 492 of 11th Edition of "Materials Handbook" by George S. Brady and Henry R. Clauser : "SOY MILK is a water solution of soyabean solubles combined with sugar, calcium phosphate, irradiated sesame oil, and vitamins. It has the approximate composition of cow's milk and is chemically almost indistinguishable from it. It is used in foodstuffs, but is not permitted to be marketed under the name of milk." New Webster's Dictionary of the English Language - Deluxe Encyclopaedic Edition, gives the meaning of milk (at p.606) as follows :- "Milk - An opaque white or bluish-white liquid secreted by the mammary glands of female mammals for the nourishment of their young; in the case of the cow, goat, and some other animals, this liquid used for food or as a source of dairy products; any liquid resembling this, as the liquid within a coconut, the juice or sap of certain plants, or various pharmaceutical preparations." 14. It may also be noted that Notification No. 143/76, dated 2.8.1976 (which, as rightly stated by Shri Dastidar, is not relevant for the present purpose) talks of Corn-Soya Milk. This is evidence of the position that "milk" for purpose of the tariff is not confined to milk as it is ordinarily understood (milk secreted by female mammals) but also includes milklime juices from vegetable sources. No doubt Chapter 4 of the Schedule would cover only milk, produce of the dairy industry, as is clear from the Chapter

Heading. But there does not seem to be any such restrictive meaning to the expression "milk" or the associated expression "milk food" when it comes to Chapter 21, which, as the Chapter Heading shows, covers miscellaneous edible preparations.

15. In the above view of the matter, we are of the opinion that the Appellate Collector's order extending the benefit of the duty concession admissible to milk food for infants and invalids to the subject product is correct. The order is, therefore, upheld and these appeals are dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com