

**Max India Ltd. Vs. Commissioner of Customs**

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

**Decided On :** Mar-02-2006

**Judge :** A Wadhwa, N T C.N.B.

**Appellant :** Max India Ltd.

**Respondent :** Commissioner of Customs

**Judgement :**

1. The appellant is a manufacturer of bulk drugs. In 1992, the appellant imported four consignments of "Wet Acry-lonitrile Fibre" and cleared the same under exempted rates (Notification No. 64 of 1979).

Subsequently, show cause notices were issued alleging that "Wet Acry-lonitrile Fibre" was not eligible for the exemption as it was classifiable under Customs Tariff Heading 5503.30. The ground being that only Acrylonitrile which is classifiable under Chapters mentioned in the Notification (28, 29 and 30) were eligible for exemption.

2. The appellant contested the allegation pointing out that Chapter 55 is for textile items, and Acrylonitrile fibre under import being specifically for use in pharmaceutical industry, was classifiable under Chapter 29 and not under Chapter 55. Literature from the appellant's supplier (showing that the item, was pharmaceutical grade) and that the consignments were actually used in drug making were also produced.

Appellant's contentions were rejected by the lower authorities and it was held that exemption was not due to the appellant. The present appeal is directed against those orders.

3. We may reproduce the relevant parts of the exemption notification in question: Exemption to certain specified goods imported for manufacture of drugs. - In exercise of the powers conferred to Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 44-Customs, dated the 1st March, 1979, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in the Table annexed here and falling within Chapter 28, Chapter 29 or Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for the manufacture of penultimate drug intermediates or drugs.

(b) 10% ad valorem, if the goods are produce or manufacture of any country on territory declared by the Central Government under Sub-section (3) of Section 4 of the Customs Tariff Act, 1975 as preferential area: Provided that the importer furnishes an undertaking to the effect that: (a) the said imported goods shall be used for the purpose specified above; (b) an account of the said imported goods received and consumed in the place of manufacture for the aforesaid purpose shall be maintained in the manner specified by the Assistant Collector of Customs; (c) he shall produce the extract of such account duly certified by the manufacturer evidencing receipt of the said imported goods in the premises of the place of manufacture within a period of 3 months or such extended period as the Assistant Collector of Customs may allow; and (d) he shall pay, on demand, in the event of his failure to comply with (a), (b) or (c) above, an amount equal to the difference between the duty leviable on such quantity of the said imported goods but for the exemption contained herein and that already paid at the time of importation. \_\_\_\_\_ Sl.

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| goods | _____       | (1) (2) It |

is clear from the notification that the exemption is in respect of "specified goods" imported for manufacture of drugs. 'Acrylonitrile' is one such specified goods. The

exemption is also subject to importer furnishing an undertaking to the effect that the imported goods shall be used in the manufacture of drugs. He is also required to keep accounts and produce proof of such use. Notification also makes it clear that liability to pay higher duty arises in the event of failure to prove that the imported item has been used in drug manufacture. In the present case, the appellant has satisfied all of these conditions.

4. The exemption is being denied relying on that portion of the notification which describes the exempted goods as "falling within Chapter 28, Chapter 29 or Chapter 30 of the First Schedule to the Customs Tariff Act. 1975". As already noted, the orders have held the classification to be under heading 5503. 30 (which is for Acrylic or Modacrylic Man-made staple fibres) and not under Chapter 29 which is for organic chemicals.

5. The appellant's contention on classification is that Heading 29.26 covers "Nitrile-function compounds" and that 2926.10 specifically names 'Acrylonitrile'. The point made by the appellant is that since Acrylonitrile is specifically mentioned in heading meant for organic chemicals and the notification specifically had exempted such chemicals when used in the manufacture of drugs, and when the appellant had produced proof of such use, the lower authorities were in error in treating the item as classifiable, under chapter 55. It is also its contention that since the imported item has satisfied the requirement of specified use. the exemption cannot be denied merely on the ground of classification dispute.

6. We find merit in the appellant's claim. A reading of the notification leaves no room for doubt that exemption is available to "Acrylonitrile" used in the manufacture of drugs. The appellant is a manufacturer of bulk drugs. Appellant has filed the following manufacturing process clearly bunting out the place of Acrylonitrile in the production: The manufacturing of 7-ADCA is 3 step process. In the first step Penicillin G Potassium First Crystals is converted into Penicillin G Sulphoxide. In the second step penicillin G Sulphoxide is converted to Ceph-G. In the third step Ceph-G is converted to 7-ADCA. The process for the manufacture of Bio-catalyst is again a three step process consisting of following phases: During the growth phase the organism is grown on appropriate media under control

conditions in submerged tanks at optimum pH and temperature. Subsequently the broth is harvested and the Bio-catalyst is recovered, purified and concentrated. The concentrated soluble and Bio-catalyst is then immobilized and treated with Ceph-G to get converted into 7-ADC A. Acrylonitrile Fibre is used in the immobilization phase where the enzymes after concentration are immobilized on the fibre. The entire process is given in the block diagram as given below:

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PHASE IMMOBOLISATION PHASE-- | The consignments in question were imported from Toyo Jozo Speciality Chemicals Japan. The literature of that Company with regard to "Wet Acrylonitrile Fibre" States the following.

Wet Acrylonitrile Fibre is used for coupling of various ligands and proteins which facilitate the manufacture of bulk drug intermediates, 6-APA and 7 ADCA., from the basic raw material Penicillin G. Potassium First Crystals.

The product has a larger surface area per unit volume for good porosity and shows good mechanical properties when packed in column reactors.

The high structural stability of the fibre, together with its favourable flow characteristics enables not only batch processing but also column process applications. The fibre can withstand column operating pressures up to 5-6 kg/cm.2g without any appreciable structural degradation. It is also unaffected by long and continuous exposure to 6-APA 7 - ADCA Low flow resistance enabling high flow rates in columns. Negligible physical changes with change in pH or salt concentrations Specifically tailored for 6 - APA and 7 - ADCA manufacture.

The fibre is packed moist in D.I. water and stored/transported at temperatures between 5-10'C. Care should be taken to prevent freezing. This is important 13-1. Kyobashi 1-Chome, Chuo Ku. Tokyo, Japan Chemicals Dept. No III 4.5.13 SHIBAURA, MINATO-KU TOKYO-108 JAPAN PHONE 03 - 5476 - 8218 - 8219 TELEX 242-3290 TOYO TK FAX 03-54176-8277 It is clear from the manufacturing process as explained by the appellant and the literature of the foreign manufacturer supplier that Wet Acrylonitrile Fibre under import are chemical products for use in pharmaceutical industries. Acrylonitrile is also mentioned in heading 2926.10. The correct classification of such a chemical cannot be under 7.

While the above appears to be the correct position about the classification, we are also of the opinion that the classification dispute by itself should not negate the purpose of the exemption notification. We have already noted that the imported goods come squarely within the scheme of the exemption. The item under import is specifically named in the exemption notification, the exemption is for its use in the drug manufacture and the imported item has been shown to be used for that purpose. In such a case, denying the exemption, merely because of a dispute about the correct classification, would be to negate the public purpose enshrined in the notification. Such an approach is not permissible while dealing with a claim for exemption.

We may in this context recall the ruling of the Hon'ble Supreme Court with regard to interpretation of exemption Notification in its judgment in the case of Commissioner of Customs (Imports), Mumbai v. Tullow India Operations Ltd. 36. The principles as regard construction of an exemption notification are no longer *res integrum*; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed liberally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning. The notification specified the goods in question by way of name ("Acrylonitrile"). The eligibility criterion stipulated in the exemption notification is that the imported item must be used in the manufacture of drugs. The classification heading indicated (29) is also one of the classifications of the item. In addition, the appellant is an actual user and he has satisfied the conditions of use. Thus, since the imported item satisfied the eligibility criteria, it is not permissible to deny the exemption to the consignments.

8. It is also to be noted that the effect of non-satisfaction of classification heading mentioned in the exemption had come up for consideration before the Apex Court in the case of Jain Engineering v. Collector of Customs and the Hon'ble Supreme Court held that where the intention is clear and manifest it will be unreasonable to take a narrow view of the Notification and not to extend its benefit. We read paras 7 and 10 of that judgment: 7. The Notification provides that the articles specified in

column (2) of the Table and falling under Heading No. 84.06 are exempt from payment of a certain portion of the custom duty. Paragraph 2 of column (2) of the Table not only mentions internal combustion piston engines, undoubtedly forming the only subject-matter of Heading No. 84.06, but it also mentions the 'parts thereof, that is to say, parts of such engines. Heading No. 84.06 does not refer to 'parts' of such engines. Non-mention of 'parts' in Heading No. 84.06 has given rise to a controversy between the parties. It may be that the Notification has been inartistically drafted. It is, however, clear that the Notification not only intends to grant exemption to internal combustion piston engines, but also to 'parts thereof.

When, therefore, the intention is clear and manifest it will be unreasonable to take a narrow view of the Notification and not to extend its benefit to the parts of the engines referred to in Heading No. 84.06. To accept the contention made on behalf of the respondents that as Heading No. 84.06 does not mention 'the parts', the Notification is inapplicable to the parts, will be to amend the Notification, which the court will not do. In our opinion, therefore, the Notification will apply to parts of the engines mentioned under Heading No. 84.06.

10. In view of our finding that the Notification exempts also parts of the engines mentioned in paragraph 2 of column (2) of the Table, in order to avail of the benefit of the exemption granted by the Notification, it has to be proved that the parts in respect of which the exemption is claimed, are parts of the internal combustion piston engine, as mentioned under Heading No. 84.06. Some of such parts may have been included under Heading No. 84.63. In other words, as soon as it is proved that the parts are of the engines, mentioned in Heading No. 84.06, such parts will get the benefit of exemption as provided by the Notification, irrespective of the fact that they or any or some of them have already been included under Heading No. 84.63 or under any other heading. Therefore, even if bushings are the same as bearings, still they would come within the purview of the Notification, provided they are parts of the engines mentioned under Heading No. 84.06. The contention of the Customs authorities that the article, which is provided under another Heading other than Heading No. 84.06, will not get the exemption as provided in the Notification, is not readily understandable. When the Notification grants exemption to the party of the engines, as mentioned under Heading No.

84.06 we find no reason to exclude any of such parts Simply because it is included under another heading.

The intention of the Notification is clear enough to provide that the parts of the engines, mentioned under Heading No. 84.06, will get the exemption under the Notification and in the absence of any provision to the contrary, we are unable to hold that the parts of the engines, which are included under a heading other than Heading No. 84.06, are excluded from the benefit of the Notification.

9. In the result, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

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