

Commissioner of Central Excise Vs. Essen Products (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-22-2006

Judge : A Wadhwa, S T S.S.

Appellant : Commissioner of Central Excise

Respondent : Essen Products (i) Ltd.

Judgement :

1. Being aggrieved with the order passed by the Commissioner (Appeals), vide which he has classified the respondent's product i.e. "Coconut Oil" under heading 1503.00 as against the Revenue's contention of classifying the same under Chapter 33, revenue has filed the present appeal.

2. After hearing both sides duly represented by Shri S.S. Bhagat, Id.

SDR for the revenue and Shri. A.S. Kulkarni, Id. Advocate, it is seen that the respondents are engaged in the manufacture of edible grade coconut oil under the brand name "Para-care" and Vitamin E was being added in the same. The oil was then re-packed in small plastic bottles of 50 MI 100 MI. 200 MI. and 500 MI. It is seen that for a limited period i.e. from 15.6.1999 to 29.6.1999, they also advertised the product by printing on the bottles as "enriched with Vitamin E and keeping fresh for a longer time vitalize of skin and hair". Since the coconut oil was of a edible grade, the above "advertisement was objected to by the Food & Drug Authorities (FDA) and was removed.

3. The Commissioner (Appeals) has held that the addition of Vitamin E, which is permitted under the Prevention of Food Adulteration Act, 1955, would not take the coconut oil from the category of edible product and would not make the same as a preparation for use on hair unless other ingredients like perfume, liquid paraffin, etc. are added. Though during the relevant period there is no test report or expert opinion, one sample of the product was drawn on 19.7.1999 and was reported to be fixed vegetable oil (coconut oil) in the form of colourless oily liquid in original unit packing bearing brand name "Para Care Coconut Oil".

The appellate authority has observed that packing does not give any indication for use as cosmetic or toilet preparation. Note 2 of Chapter 33, lays down three conditions for classifying the product under Chapter 33. These conditions are (i) suitability for use as goods of these headings, (ii) packing/label/literature should be indicative of their use as cosmetics or toilet preparations (iii) put up in a form clearly specialized to such use.

4. Inasmuch as the product in question was in the natural form and only Vitamin E is added and repacked, the same cannot be held to be a cosmetics or toilet preparation or preparation of type covered under Chapter note 6 to Chapter 33. He has also relied upon the Tribunal's decision in the case of Kothari Products Ltd. v. CCE Kanpur . He has also taken note of the facts that there was a little mis-declaration/advertisement for a very short period on the out side of the bottles but the predominant advertisement on the label was with regard to its use as edible grade coconut oil. If the appellants have also advertised that the oil in question is good for skin and hair, that will not take away the essential character of the goods as edible grade is printed on the packing of the goods. Reference has also been made to Delhi Collect orate Trade Notice 1/CX. 33/87, dated 2.2.1988 reported in 1988 (33) E.L.T. T-33 clarifying that mixture of essential oils with fixed vegetable oils and other ingredients, which are capable of being used on the hair as perfumed oil would be classifiable under Chapter sub-heading 3305.10 as perfumed hair oil, as they are used as such. Inasmuch as the condition laid down in the said Trade Notice are not satisfied in the assessee's case, he has held the goods to be classifiable under Chapter 15.

5. As against the above, the revenue has contended that it is the common parlance test, which has to be adopted for classifying the product and inasmuch as the product in question is mainly used as hair oil, the same should be classified under Chapter 33. Coconut oil, having multiple use, has to be treated as cosmetics or hair oil when packed in containers for the purposes of application on hair. Reference has been made to the Tribunal's decision in the case of British Cosmetics, wherein nail polish thinner when packed in small packing of 60 ml also held to be cosmetics classifiable under Chapter 33.

6. After considering the submissions made by both sides, we find there is no quarrel on the legal issue on classifying a product depending upon as to how the same is known in the market in common parlance.

However, apart from contending that the goods in question are known in the market as hair oil no evidence to that effect has been produced by the revenue. On the other hand, we find that the Commissioner (Appeals) has given a categorical finding that coconut oil is of an edible grade with addition of only Vitamin E. Other items which convert the coconut oil to hair oil have not been added in the said goods.

7. Tribunal in the case of Kothari Products Ltd. .

has, after taking note of Chapter note 2 of Chapter 33 and CBE & C Circular No. 145/56/95 has held that the goods to be classifiable under Chapter 15. For better appreciation, we re-produce para 7 of the said decision: We have considered the submissions of both sides. It is not in dispute that the coconut oil in bulk falls under Heading 15.03 of the Central Excise Tariff. Coconut in bulk is also useable as hair oil and it is not that it becomes useable as hair oil only after it is re-packed into small containers. This has also been recognized by the Central Board of Excise & Customs in Circular No. 145/56/95, dated 31.8.95 wherein it was mentioned that coconut oil has multiple uses, as besides cosmetics and toilet preparation, for making lubricating greases, synthetic detergent, laundering and cleaning preparations as a source, of fatty acid and also as an oil for application on hair by some sections of the society. We are of the view that merely by repacking the coconut oil from bulk into small packs no new product having a different name, use

or character emerges and as such no manufacture takes place. The question which remains to be examined is whether Notes 2 or 4 to Chapter 33 will bring the small packs of coconut oil within the scope of Heading 33.05 as "preparations for use on the hair". Note 2, as clarified by the Apex Court in BPL Pharmaceuticals Case, *supra*, the product is required to be (i) a cosmetic (ii) must be put up in packing (iii) with labels literature or indications that they are for use as cosmetics. It is not the case of Department that the coconut oil is not fixed vegetable oil falling under Heading 15.03. Further there is no labels, literature or indications on the packing that the product is for use as cosmetics or toilet preparations. Merely the fact that the product is being advertised as hair oil is not enough to classify it under Heading 33.05 or to attract provisions of Note 2 to Chapter 33. It is the consistent view of the Tribunal that classification of the product cannot be determined on the basis of certain characteristics of a product highlighted in the advertisement by the manufacturer. The classification is determined on the basis of the nature of product and its description in the relevant Heading of the Tariff. In *Ram Tirth Yogasharam, supra*, relied upon by the Id. Consultant, it has been held by the Bombay High Court that the mode in which a person may choose to advertise his commodity cannot be decisive in determining its real nature.

Similar views were expressed by Madras High Court in *TSR & Company case, supra*. The Bombay High Court again in *Leucoplast (1) Pvt Ltd. v. UOI* observed as under: However, it may be pointed out that for the purposes of classification for levy, the advertisements are of no value or help.

Advertisements, are published by the manufacturers of a product in order to attract consumers and have nothing to do with the classification of the same product for levying of duty. This Court dealing with such contentions has held *inter alia*, in the case of *Blue Star Ltd. v. UOI and Anr.* that payment of duty under a particular Tariff item must depend upon the facts of the case and not on the advertisement gimmick of the advertiser. The same view has also been taken in *Subhash Chandarnishat v. UOI and Anr.*

1979 (4) E.L.T. J.212 (Bom) and by a Division Bench of the Kerala High Court in the case of the Dy. Commissioner of Agricultural Income Tax and Sales Tax (Law)

Board of Revenue (Taxes) Ernakulam v. Union Carbide India Ltd. Madras. 2 1976 Sales Tax Cases (Vol.38) Page 198) 8. As such, after considering the Board's Circular, the Tribunal has held the coconut oil as classifiable under Chapter 15. We also take note of another decision of the Tribunal in the case of Srikanth Sachets Pvt Ltd. v. CCE Visakhapatnam Tri-Bang. holding an identical product as classifiable under heading 1503 of the Central Excise Tariff as fixed vegetable oil. We find no reason to take a view different from the decisions above referred.

Accordingly, the appeal filed by the revenue is rejected.

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