

D. NavIn Chandra and Co. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-09-1988

Reported in : (1988)(18)ECC1

Appellant : D. NavIn Chandra and Co.

Respondent : Collector of Customs

Judgement :

1. This appeal is against Order No. M/S-250/84-C, S-5-Test-341/84-C, S-10-91/84-C, S-10-92/84-C and S-5-Test-340/84-C, dated 12-8-1987 passed by the Collector of Customs, Bombay.

2. The facts of the case, briefly stated, are that the appellants imported 4 consignments of goods described variously as Paratfinic Rubber Plasticizers and Plastic Oil 350 USP (Paraffinic Plasticizer).

They sought clearance of the goods against five advance licences contending that the goods were covered by entry 254 in Appendix 5 of the Import Trade Control Policy for the period April 83 to March 84.

The said entry read as:- "Paraffinic/Naphthenic/Aromatic Rubber Plasticizers". All these licences were valid for Import of items falling under the said Appendix 5 of AM 83-84 Policy excluding Items figuring in Appendix 2i3 of the relevant policy. In the case of Bill of Entry IGM No. 2748 Item No. 312 and Bill of Entry IGM No. 2866 Item No.28, goods were released on a test-cum-ITC Bond. The claim of the

appellants was that the goods were assessable under Heading 27.10(9) of the Custom Tariff Schedule 1975 as Hydrocarbon OH which has its flashing point at or about 93.3 Centigrade and is ordinarily used for batching of jute or other fibres. Samples were drawn for test and pending receipt of the test report the goods were provisionally assessed under residuary sub-heading 27.10(1). In so far as the goods covered by the Bill of Entry IGM No. 403 Item No. 42 and Bill of Entry IGM No. 607 Item No. 21, the claims of the appellants were similar, that is, the goods were Paraffinic Rubber Plasticizers assessable under Heading 27.10(9) of the Tariff Schedule and eligible for clearances under the licences against entry No. 254 of Appendix 5 of AM 83-84/TC Policy. The samples drawn from these consignments were reported by the Deputy Chief Chemist to have characteristics of liquid paraffin, free from any added ingredients, but of non-pharmacopoeial grade. Liquid paraffin was covered by entry 1 (9) in Appendix 9 of AM 83-84 policy ("liquid paraffin including pharmacopoeial grade"). According to the Policy the import of liquid paraffin can be made only by the Indian Oil Corporation. Further, liquid paraffin was assessable to a higher rate of duty in terms of Customs Notification 32/84 as against other mineral oils falling under Heading 27.10. A show cause notice was issued to the importers alleging that the goods were liable to confiscation under Section 111 (d) of the Customs Act since they were not covered by the licences produced. In the meantime, the Deputy Chief Chemist reported in respect of the goods covered by the first two bills of entry that they also were found to satisfy the requirements of liquid paraffin. A show cause notice was issued in respect of these consignments also.

Notices for payment of duty short levied were also issued.

On the appellants' request for retest of the goods in the Central Revenues Control Laboratory, New Delhi, the Chief Chemist reported the goods to be 'White Oil of Technical Grade'. It was reported that the goods did not conform to pharmacopoeial standards for Liquid Paraffin USP and, therefore, were worth considering as White Oil. White Oil, again, was an item figuring at Serial No. 24 in Appendix 9 of AM 84-85 Policy which could be imported only by the Indian Oil Corporation.

Also, in terms of paragraph 240(b) the Import of these goods against the additional licences produced was alleged to be unauthorised.

The appellants, however, contended that the goods were neither Liquid Paraffin nor White Oil. The detailed specifications of the goods supplied by the manufacturers were made available to the Custom House by the appellants with the request that they be forwarded to the Chief Chemist for consideration. This request, however, was not granted. It was contended by the appellants that these plasticizers were tailor-made products for application in particular types of rubbers.

After hearing the appellants, the Collector passed the impugned order.

He held that the goods were White Oil covered by entry 1 (24) of Appendix 9 of AM 83-84 ITC Policy though they may also find use as rubber plasticizers. However, In view of para 240(a) of the ITC Policy, he held that the mischief of Appendix 9 was attracted and the goods were not eligible for clearance against the additional licences produced. In this connection he placed reliance on para 203 of the Policy also. He further held that the goods were assessable as White Oil. He also held that the goods were liable to confiscation under Section 111 (d) of the Customs Act. Since they were, however, not available for confiscation, having been released on Test-cum-ITC Bond, he ordered that the terms of the Bonds shall be enforced to the extent indicated in the order aggregating to Rs. 28,96,849.00. He also imposed a penalty of Rs. 7,00,000/- on the appellants under Section 112 of the Customs Act.

3. We have heard Shri T.V. Krishnamurthy, Consultant, for the appellants and Shri A.S. Sundar Rajan, D.R., for the respondent Collector.

4. When the matter came up before the Bench on 1-6-1988, the appellants had moved an application with the following prayers : (a) a direction may be issued to refer the manufacturer's literature containing specifications of the products and recommended end uses to the Chief Chemist for consideration and categorical opinion as to whether the goods imported were Paraffinic Rubber Plasticizers or not; and (b) the Department might be directed to make available to the appellants exact copies of relevant test reports, since only extracts therefrom had been

furnished to them.

As earlier noted, the manufacturer's literature had not been forwarded to the Chief Chemist by the Customs authorities though a specific request in this behalf had been made. In the interest of justice, the Bench directed that the said literature should be forwarded to the Chief Chemist for opinion. The Department was also directed to furnish exact copies of the test reports to the appellants,. These two directions have since been complied with.

5. Shri Krishnamurthy referred to Chief Chemist's opinion contained in his letter dated 25-5-1987 to the Collector. In this letter the Chief Chemist had discussed two questions :- (a) Whether the goods described as "Paraffinic Rubber Plasticizer" are liquid paraffin of other than pharmacopoeial grade or "White Oil technical"; and The Chief Chemist opined that White Oil is more or less a generic name which can include liquid paraffin also. The term "Liquid Paraffin" is a specific name used to indicate medicine I grade of white oil. There was no material to show that Liquid Paraffin is a description also applicable to non-medicinal grade of white oils and liquid paraffin figures only in pharmacopoeia like IP, BP etc. It is only in the ITC Policy Book in Appendix 9 that there is a description "Liquid Paraffin including pharmacopoeia! grade" giving the impression that there exists "Liquid Paraffin" of other than pharmacopoeial grade. The Chief Chemist was not sure whether there was such liquid paraffin. He further stated that Paraffinic or Naphthenic oils are used as plasticizers in Rubber Industry and such oils were tailor-made products for different types of rubbers. No product specification or recommended usage having been furnished by the appellants, the Chief Chemist stated that he was unable to identify the goods as rubber plasticizers. It is in this background that the Chief Chemist-was Inclined to conclude that the subject goods were "White Oil of non-pharmaceutical grade".

6. Next, our attention was drawn to the opinion contained in the letter dated 22-7-1988 of the Deputy Chief Chemist, Central Revenue Control Laboratory which was the result of our directions given on 1 -6-1988 (Deputy Chief Chemist has been functioning as Chief Chemist whose post has been vacant). This opinion has been given after examining the literature on the product. The relevant portion of this

opinion reads as follows: "However, the particulars furnished under each of the three products, include the physical properties like appearance, specific gravity, viscosity, flash point and Aniline point and the intended end uses specifying the types of polymers for which it will be suitable. These are the details given against the paraffin oils of various grades in the book "Rubber World Blue Book" 1981 Edition under the category of plasticizers and softeners. The numerical suffix '350' is indicative of the viscosity of the product. In broad details, these are comparable with those given in the "Blue Book" for paraffinic oils used as plasticizers and softeners.

7. During the hearing before us, Shri Sundar Rajan, for the Department, clarified that in view of the latest opinion of the Chief Chemist, the Department would proceed on the basis that the subject goods are Paraffinic Rubber Plasticizers. However, he submitted that since there was no difference in duty as between Heading 27.10(1) and Heading 27.10(9), it would not be necessary for the Tribunal to undertake an academic exercise of fixing classification of the goods. Shri Krishnamurthy, for the appellants, agreed with this submission. We are not, therefore, in these proceedings, determining the classification under the Customs Tariff Schedule, 1975, of the subject goods.

8. The only question which then survives for consideration is whether the ITC licences produced for clearance of the goods were valid to cover their importation or not. In this connection, our attention has been drawn by Shri Sundar Rajan to the latest opinion of the Deputy Chief Chemist from which he would submit that the latter even now does not say that the goods are not White Oil but that they conform to the specifications for rubber plasticizers. Since the goods are White Oil, they figure in Appendix 9 of AM 84 Policy and by virtue of application of Para 240(a) of the Policy, the restrictions in Appendix 9 will prevail even though goods may have been specified in Appendix 5. As against this, Shri Krishnamurthy's contention is that in accordance with para 240(b), "Paraffinic Rubber Plasticizer" having been specified in Appendix 5 will prevail over generic descriptions in all the other appendices. Shri Krishnamurthy also submits that the licences in question were specifically valid for importation of Appendix 5 items.

9. We have carefully considered the submissions. Out of the five licences produced for clearance of the goods, Shri Krishnamurthy has submitted before us photocopies of three licences and these licences are specifically valid for import of Items appearing in Appendix 5 and Appendix 7 excluding, however, items appearing in Appendix 26 of the Policy. It is seen from the Collector's order that all the five licences in question were additional licence valid for import of items falling in Appendix 5 of AM 83-84 Import Policy excluding items figuring in Appendix 26. As already mentioned, the Deputy Chief Chemist in his opinion dated 22-7-1988 has concluded, with reference to their specifications, that the subject goods conform to the requirements for paraffinic oils used as plasticizers and softeners for rubbers. The Department also accepts them as Paraffinic Rubber Plasticizers before us in the light of the Deputy Chief Chemist's opinion. However, it is Shri Sundar Rajan's contention that the goods are nevertheless White Oil falling in Appendix 9 Item 24. If they are White Oil, it would follow that they can be imported only by the Indian Oil Corporation as stated in Appendix 9 and the additional licence produced for their clearances would not be valid to cover their importation. However, we are not satisfied that the goods are White Oil. It must be noted in this connection that the Chief Chemist's earlier opinion of 25-5-1987 was given in the absence of the manufacturer's literature setting out the product description and specifications. In that opinion, he had stated that White Oil was a generic name used to denote the general category of refined petroleum oils which could include "Liquid Paraffin" also and that liquid paraffin other than pharmacopoeial grade was not known to exist. He had further stated that paraffinic oils were known to be used as plasticizers in rubber industry. It was because non-pharmacopoeial grade liquid paraffin was not known that he had concluded on the basis of available information that the goods were "White Oil". The Chief Chemist was unable, for lack of evidence, to identify the goods as rubber plasticizers. When, however, the data produced by the appellants were referred to the Chief Chemist under the direction of this Bench, the Deputy Chief Chemist in his opinion dated 22-7-1988 has identified the products as paraffinic oils used as rubber plasticizers. In these circumstances, it appears to us that it is more appropriate to classify the goods as Paraffinic Rubber Plasticizers under entry 254 of Appendix 5 rather than as White Oils under entry 24 of Appendix 9 of the AM 84 Policy.

10. If all paraffinic oils other than of pharmacopoeial grade are to be considered only as White Oil and are to be classified in Appendix 9, then the entry Paraffinic Rubber Plasticizers in Appendix 5 would lose its meaning in so far as paraffinic oils used as rubber plasticizers are concerned. Therefore, the harmonious construction of Appendices 5 and 9 would, in our view, lead to the conclusion that such Paraffinic Oils as are recognisable as Paraffinic Rubber Plasticizers would fall for classification under entry 254 of Appendix 5.

11. In the above view of the matter, it would not be necessary in our opinion, to consider whether sub-para (a) or (b) of para 240 of the Policy 83-84 will have application. Even if sub-para (a) is considered it will have no application to the facts of the present case, since we have already held that the subject goods do not fall in Appendix 9.

12. We have also to take note of the fact that the licences were specific for the import of items appearing in Appendices 5 and 7 with the exclusion of only items appearing in Appendix 26 of the Policy.

13. In the result, we hold that the licences produced for clearance of the goods were valid to cover their importation. Consequently, we set aside the Collector's order and allow the appeal with consequential relief to the appellants. We would like to clarify that our order, as already noted, does not cover the classification (and applicable rate of duty) of the goods under the Customs Tariff Schedule, 1975.

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