Texspan Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-23-1989

Reported in : (1990)(26)ECC17

Appellant : Texspan

Respondent : Collector of Customs

Judgement :

1. This is an appeal against Order-in-Appeal No. 880/87 BCH dated 23-2-1987 passed by the Collector of Customs (Appeals), Bombay, upholding the Assistant Collector's order of classification of "Be-henyl Alcohol C 22 70%" imported by the appellants as "artificial wax" under Heading No. 34.01/07(2) of the First Schedule to the Customs Tariff Act, 1975 ("the Schedule") as it stood at the material time, as against the claim for classification of the product as a "fatty alcohol" under Chapter 15 of the Schedule and consequent rejection of the refund claim filed by the appellants.

2. As seen from the orders of the lower authorities, the goods were subjected to chemical test and found to be fatty alcohol having the characteristics of artificial wax and hence the assessment under Chapter 34. This classification would not appear to make any difference to the duty leviable under the Schedule ("basic duty of customs") but the appellants claim is for refund of the additional duty of customs leviable under Section 3 of the Act. Customs Notification No. 48/79 dated 1-3-1979, as amended by Customs Notification No. 4/83 dated 1-1-1983, exempted imported goods falling under Chapter 15, but not Chapter 34, and falling under

Item No. 68 of the First Schedule ("the GET") to the Central Excises & Salt Act, 1944, from the levy of additional duty of customs.

3. The appellants were not present at the hearing. Their Counsel Shri Akolkar has, however, submitted written arguments. We have accordingly heard Shri Chandrasekharan, SDR, for the respondent Collector and perused the record.

4. The question of classification of some fatty alcohols came up for detailed consideration in this Tribunal's order in the case of Collector of Customs, Bombay v. Hico Products Ltd., Bombay and Anr.

-1984 (18) E.L.T. 564. It was held therein that from a combined reading of the statutory notes in, and rules of interpretation of, the Customs Tariff Schedule, fatty alcohols of all sorts were more specifically covered by Chapter 15 (Heading 15.08/13) than Chapter 29 of the Schedule.

5. In the Hico Products case, however, the competing headings were 15.08/13 and 29.01/45(1). The heading canvassed by the Revenue in the instant case is 34.01/7(2) which reads - "34.01/07 - Soap... artificial waxes, prepared waxes not emulsified or containing solvents,...

The explanatory note appearing in the CCCN (Customs Co-operation Council Nomenclature) under heading 15.10 of that Nomenclature is cited in support. The relevant note reads - (b) Fatty alcohols which have the character of artificial waxes (heading 34.04)." The Chemical Examiner's report, as already noted, shows the subject fatty alcohol as having the character of artificial wax. Hence, it is urged, the appropriate classification is under heading 34.01/7(2) of the Indian Customs Tariff Schedule.

6. As noted in para 9 of the Tribunal's order in the Hico Products case (supra), the CCCN explanatory notes have no legal force. They are, however, a useful aid in understanding the scope, and meaning, of headings and terms used in our Tariff Schedule. But if the legal text of our Schedule, read with the statutory aids to their construction and interpretation, points to a conclusion different from that resulting from a reading of the CCCN explanatory notes, the former will prevail.

7. Statutory Note 1(d) to Chapter 15 of the Indian Customs Tariff Schedule reads :- (d) Fatty acids in an isolated state; prepared waxes, medicaments; paints; varnishes; soap, perfumery, cosmetics or toilet preparations, sulphonated oils or other goods falling within any heading in Section VI." Therefore, if the goods in the instant case, admittedly a fatty alcohol, are "prepared waxes" or fall within any heading in Section VI, they would be out of the scope of Chapter 15. Now, Chapter 29 has to be ruled out in the light of this Tribunal's decision in the Hico Products case (supra). The only classification canvassed before us by the Revenue is heading 34.01/7(2). Statutory Note 4 to Chapter 34 provides that the term "Prepared waxes, not emulsified or containing solvents" is to be taken to apply only to: " (a) mixtures of animal waxes, mixtures of vegetable waxes or mixtures of artificial waxes; (b) mixtures of different classes of waxes (animal, vegetable, mineral or artificial); and (c) mixtures of waxy consistency not emulsified or containing solvents with a basis of one or more waxes, and containing fats, resins, mineral substances or other materials." The Revenue has not adduced any evidence that the subject goods conform to the above definition of "Prepared Waxes" and, hence this classification has to be ruled out. Now, it is to be noted that Statutory Note 1(d) to Chapter 15 (extracted earlier) excludes, in terms, prepared waxes but not artificial waxes. Even so, if the subject goods fall within any heading in Section VI of the Tariff Schedule, they would be out of Chapter 15 because of the said Statutory Note.

Chapter 34 is in Section VI. We have, therefore, to consider whether the goods are "artificial waxes" within the meaning of heading 34.01/07(2). The appellants' contention is that the imported Behenyl Alcohol Caa 70% is a mixture of aliphatic alcohols - Cig, Cao, C2 and C4 in which Behenyl Alcohol C2 predominates, it being present to the extent of 70%. This contention is not controverted by the Revenue. The invoice description and the Bill of Entry description which follows it is "Behenyl Alcohol C2 70%." The reference book titled "Condensed Chemical Dictionary" by Gessner G. Hawley has the following passage on Behenyl Alcohol - "Behenyl alcohol - (1-docosanol) CHa (0*2)20 CH2CH. A long-chain, saturated fatty alcohol.

Properties : Colorless waxy solid : m.p. 71C; b.p. 180C (0.22 mm).

Insoluble in water: soluble in ethanol and chloroform. Low Toxicity.

Combustible.

Derivation: Reduction of behenic acid with lithium aluminium hydride as catalyst.

Uses : Synthetic fibres; lubricants; evaporation retardant on water surfaces." The alcohol is stated to be a colourless waxy solid. Being waxy is not the same thing as being a wax. In this connection, the appellants have drawn our attention to the explanatory note appearing under heading 15.19 (which, inter alia, covers industrial fatty alcohols) of the Harmonised Commodity Description and Coding System, again evolved by the Customs Cooperation Council, Brussels, on the basis of which the present Indian Tariff Schedules have been drawn up, which states that the heading covers also industrial fatty alcohols which have a waxy character. We have already stated that these explanatory notes have no legal force. While the note just referred to would include industrial fatty alcohols having waxy character within the meaning of the term "industrial fatty alcohols", the corresponding note under the CCCN, would exclude such alcohols from the term "fatty alcohols". Therefore, not much reliance can be placed on these notes when it comes to the question of interpretation of the tariff entry in these proceedings.

8. Assuming that the subject goods are "artificial waxes" because they have the characteristics of artificial waxes, the question would be which is the more specific heading - "fatty alcohols" or "artificial waxes"? We would be inclined to think that "fatty alcohols" is the more specific description especially in view of the position that Chapter Note 1(d) excludes, in terms, "prepared waxes" but not "artificial waxes" from the scope of Chapter 15. If the goods are to be considered as falling in Section VI of the Customs Tariff Schedule as "artificial waxes", then, the Revenue will have to show that the goods are indeed "artificial waxes". The invoice, as already noted, describes the goods as "fatty alcohol". That is prima facie evidence of the position that the subject goods are traded as "Fatty Alcohols" and not as "artificial waxes".

9. In the state of the evidence on record, we consider that heading 15.08/13 is more appropriate than heading 34.01/7(2) of the Customs Tariff Schedule. In

which event, the goods would be exempt from payment of additional duty of customs because of Customs Exemption Notification No. 48/79 dated 1-3-1979 as amended by Notification 4/83 dated 1-1-1983. In this view of the matter, the impugned order is set aside and the appeal allowed with consequential relief to the appellants.