

**Cynamid India Ltd. Vs. Collector of Central Excise**

**Cynamid India Ltd. Vs. Collector of Central Excise**

**SooperKanoon Citation :** [sooperkanoon.com/557](http://sooperkanoon.com/557)

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

**Decided On :** Sep-05-1983

**Reported in :** (1984)(15)ELT186TriDel

**Appellant :** Cynamid India Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. Messrs. Cynamid India Ltd., have filed an appeal before the Tribunal against the order-in-appeal No. A-293/BD-115/83 dated the 5th March, 1983, passed by the Collector of Central Excise (Appeals), Bombay.

2. In this case the goods in question, which have been described by the appellants as "animal feed products" were held to be assessable under Item 68 of the Central Excise Tariff but as not covered by the expression "animal feed" in exemption notification No. 55/75, dated 1-3-1975 (as amended), and therefore not eligible for exemption in terms of that notification. The appellants have contested this finding and have submitted that the goods were in fact "animal feeds" and therefore entitled to the benefit of the exemption, 3. When the case was called for hearing on 13-7-1983, Shri Ganesh filed an application seeking to add the following additional ground of appeal : - "The Appellants submit that no excise duty can be levied at all on their Aurofac Products as there is no manufacturing process carried out by the Appellants for making the said products." They also filed an affidavit of Shri K.K. Sardal, Company Secretary of the appellants, in support of this application. Shri Tayal, on behalf of the Department, sought time for perusal of the

application and the affidavit, and for filing of a counter-affidavit if considered necessary. The Bench agreed to this and adjourned the case to 5-9-1983, and directed that the counter-affidavit should be filed by 26-8-1983.

4. When the case came up on 5-9-1983, the application of Shri Ganesh was considered. Shri Tayal stated that he had not filed a counter-affidavit, as he had to receive instructions from the Collector. Apart from this, he argued that the fresh ground should not be allowed to be taken at this stage, since it had not been taken before the lower authorities or in the original appeal to the Tribunal.

The Bench considered that, since the appeal involved the question of correct classification of the goods, on which a ruling would have to be given, it would not be in the interests of justice or conduce to a proper disposal if the appellants were prevented from raising the new ground. The Bench accordingly indicated that this ground would be allowed to be raised.

5. In view, however, of the fact that this ground had not been agitated at lower levels, and that it would also require a detailed enquiry into questions of fact, the Bench considered it appropriate that the matter should be remanded to the Assistant Collector for a fresh decision, in the light of the additional ground. Shri Ganesh expressed the willingness of the appellants to pursue the matter before the Assistant Collector. He, however, submitted that the order-in-appeal contained a clear finding in favour of the appellants that the demand beyond a period of six months was time-barred. He pointed out that although the Department had filed a cross-objection, they had not sought a reversal of this finding. According to him, the readjudication by the Assistant Collector should be consistent with this finding. In other words, even if on the question of excisability or classification the decision was adverse to the appellants, the demand could not in any case extend beyond a period of six months. Shri Tayal had no submissions to make on this point.

6. We accordingly set aside the findings of the Appellate Collector and the Assistant Collector as regards the classification of the goods and remand the case to the Assistant Collector of Central Excise, Bombay, for readjudication on the question of classification of the goods, taking into account the additional ground taken by the appellants to the effect that the goods were not excisable. His

decision should, however, be without prejudice to the finding of the Appellate Collector that a demand in this case beyond the period of six months would be time-barred.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**