

Fgp Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-16-1990

Reported in : (1990)(50)ELT640TriDel

Appellant : Fgp Ltd.

Respondent : Collector of Customs

Judgement :

1. The appellants imported "Rasorite Crude Sodium Borate Concentrate".

The goods were classified under Heading 28.01/58(1) of the Customs Tariff Act, 1975 as chemical. The appellants claimed re-assessment under Heading 25.01/32(1) of the Customs Tariff Act, 1975 read with Notification No. 147/76-Cus., dated 2-8-1976. This claim was turned down by the lower authorities.

2. The learned advocate has argued that the appellants' case is covered by the Tribunal's Order No. 533/89-C dated 4-9-1989 in their favour. In the said case, the appellants imported Crude Sodium Borate Concentrate.

The appellants therein contended that the imported goods were Kernite whose brand name was Rasorite. It was held by the Tribunal in the said case that the goods imported were Kernite (Rasorite). Under Notification No. 147/76-Cus., dated 2-8-1976, Kernite including its concentrates and colemanite including crude calcium bbrate falling under Chapter 25 of the Customs Tariff Act, 1975 were exempted from the basic customs duty in excess of 40% ad valorem. The Tribunal

held that the imported goods were classifiable under Chapter 25 of the Customs Tariff Act, 1975 read with Notification No. 147/76-Cus., dated 2-8-1976. Shri Baxi has also drawn our attention to the extracts from authoritative books, technical opinion of the experts, affidavits from the experts and the chemical analytical report submitted in the paper-book filed by the appellants. He has argued that Kernite is a mineral substance and "Rasorite" is the brand name of Kernite. He has argued that the imported goods are Kernite correctly classifiable under Heading 25.01/32(1) read with Notification No. 147/76-Cus. The learned DR has argued that the analytical test report shows that silica was found in the analytical report and hence the formula in the present consignments is not the same as in the goods covered by the Tribunal's decision relied on by the learned advocate.

3. We have considered the records and the arguments. The order-in-original No. KDL/44/AC/88 dated 21-3-1988 shows that the chemical composition of the impugned goods is $\text{Na}_2\text{B}_4\text{O}_7 \cdot 4\text{H}_2\text{O}$. The presence of small percentage of silica denotes impurity. The affidavit of Dr. Monohar Shridhar Vaidya, General Manager (Research and Development) of M/s. The Dharamsi Morarji Chemical Co. Ltd. says that he had analysed sample of "Rasorite 46" and had found it to be crude mineral in the natural crystalline form with diverse impurities and that it is nothing but Kernite concentrate with 4.3 molecule of water crystallisation. In the affidavit, he has given extracts from (a) Condensed Chemical Dictionary - 9th Edn. - revised by Gesnor G. Hawley, which shows Kernite - $\text{Na}_2\text{B}_4\text{O}_7 \cdot 4\text{H}_2\text{O}$ is a natural sodium borate and that Rasorite is the trade name for Sodium Borate Concentrate; (b) McGraw Hill Encyclopedia of Science and Technology - Vol. 7 - Page 383, which says that Kernite is a hydrated borate mineral with chemical composition $\text{Na}_2\text{B}_4\text{O}_7 \cdot 4\text{H}_2\text{O}$. It says that the mineral Kernite was earlier called Rasorite; (c) The New Encyclopedia Britannica, Volume 6, 15th Edition, published by Encyclopedia Britannica Inc., which gives formula of Kernite as $\text{Na}_2\text{B}_4\text{O}_7 \cdot 4\text{H}_2\text{O}$; (d) Thorpe's Dictionary of Applied Chemistry, Page 49, which shows that Rasorite and Kernite are one and the same and that Rasorite is concentrated by mechanical processes and no process of crystallization is involved. Dr. Vaidya opined that Rasorite and Kernite are one and the same and that Rasorite-46 is a Kernite concentrate (Page 62 to 64 of paper-book). At pages 65 to 68 is a photostat copy of affidavit of Dr. Cristopher E.S. VAZ, Reader in Physico-Inorganic

Chemistry, Department of Chemical Technology of the University of Bombay. He has opined that Kernite and Rasorite are synonymous terms used to describe ores containing the mineral of composition $\text{Na}_2\text{B}_4\text{O}_7 \cdot 4\text{H}_2\text{O}$ and that Rasorite-46 is a Kernite/Rasorite ore concentrate. In this affidavit at pages 69 to 71 of the paper-book, Dr.

Sam Framroze Sethna, Professor & Head of Department of Geology, St.

Xavier's College, Bombay has stated that he examined the sample of Rasorite/Kernite supplied by M/s. Borax Morarji Limited to determine the possibility of the material being of natural origin. He has opined that the material has been derived from a naturally occurring mineral deposit of Kernite (the other name for Kernite is Rasorite). Similarly, in his affidavit at pages 72 to 74 of the paper-book, Shri Amit Kumar De, Works Manager of the Ferro Coatings & Colours Ltd. has stated that he analysed the samples of Rasorite-46 and he found it to be a natural mineral in crystalline form, in crude state with diverse impurities of rock-clay, silica and many others. He has opined that it is a compound of crude composition, i.e. it is unrefined crude sodium borate with contents of 4 molecules of water in it, with many impurities. He has also stated that Rasorite is often used as a synonym for Kernite.

4. The appellants have filed a copy of Report of Indian Institute of Technology, Bombay on mineralogical investigation of Rasorite-46 and Borax pentahydrate and Borax decahydrate, at pages 75 to 76 of paper-book. It says that the mineralogical identification by X-Ray diffraction and infra red spectra confirms that the sample of Rasorite is tallying with the Kernite mineral description, which is also frequently referred to as a Rasorite of around 46% of B_2O_3 and does not show any signs of artificial recrystallisation. At pages 88 to 89 of the paper-book, the appellants have given quotations from technical books which show that Rasorite is another name of Kernite and has the chemical composition $\text{Na}_2\text{B}_4\text{O}_7 \cdot 4\text{H}_2\text{O}$. Encyclopedia of Chemical Technology edited by Raymond E. Kirk and Donald F. Othmer - Vol. 2, second printing 1953 says that the most important sources of borax are the mineral Kernite (Rasorite), $\text{Na}_2\text{B}_4\text{O}_7 \cdot 4\text{H}_2\text{O}$, and Borax (tincal) $\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O} \cdot 5$. In the order-in-original No. S/6-4-C-21/81-R/4-20/81 VA dated

2-2-1987 (in appeal No. C/2124/88-C), the Assistant Collector has stated that the imported goods are declared in the invoice as Rasorite-46 SBC. As per test findings this is Sodium Borate, containing water in the form of dull white coarse granular powder. He had held that it is neither crude nor natural being in granular form and hence it should fall under Heading 28.01/58(1). He has observed that only crude natural borate minerals as extracted, concentrate of such materials are included under Chapter 25.

6. In the order-in-original No. KDL/44/AC/88 dated 21-3-1988, which is the subject matter of Appeal No. C/186/89-C, the Deputy Collector of Customs has stated in his findings that the goods imported by the appellants were "Rasorite-46/Crude Sodium Borate Concentrate". He has observed that the appellants had not explained how Rasorite-46 containing water of crystallisation to the extent of $10\text{H}_2\text{O}$ was manufactured without the process of crystallisation nor had they contradicted the application of Chapter Note 1(a) of Chapter 28 of the Central Excise Tariff Act, 1985. Following the said Chapter Note, he has classified the goods under Heading 28.01/58(1).

7. At page 107 of "Nonmetallic Minerals" by Raymond B. Ladoo and W.M.Myers, Second Edition, 1951 (Extract filed by the appellants in Appeal No. C/2142/88-C), the following is stated, "with two exceptions, all natural borate minerals of any importance are hydrous borates with 4 to 16 molecules of water crystallisation. They are simple borates of sodium or calcium or both, except for the unimportant bakerite and howlite, which also contain silica. The two exceptions first noted are sassolite (natural boric acid) and boracite (magnesium borate and chloride)." The Deputy Collector's order indicates that the sample of imported Rasorite-46 contained water crystallisation to the extent of $10\text{H}_2\text{O}$, which falls within the above range of water crystallisation given to hydrous borate which is stated to be natural borate mineral.

In the table I-Boron Minerals (other than silicates) given in the book "Comprehensive Inorganic Chemistry", Vol. I, Pages 666-667, edited by J.C. Bailar, H.J. Emeleus, R. Nyholm and A.F. Trotman-Dickenson, whose extract was enclosed to the report of Dr. CE.S.Vaz, Reader in Physico-Inorganic Chemistry,

University of Bombay, photocopy of which is placed in Appeal File No. C/2142/88-C, the Formula of Borax (Tincal) has been shown as $\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$. As per the Deputy Collector's findings the sample of imported Rasorite-46 contained $10\text{H}_2\text{O}$. At page 52 of Dictionary of Commercial Chemicals by Foster Dee Snell and Cornelia T. Snell, Third Edition (photo-copy placed at pages 112 to 113 of the paper-book filed in appeal No. C/186/89-C) the following has been stated :- "SODIUM TETRABORATE, SODIUM BORATE, or BORAX, $\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$, is slightly soluble in cold water, extremely soluble in hot, and also soluble in glycerine. It is a naturally occurring product, RASORITE, which is purified by crystallization to give varying grades. Borax is also obtained from naturally occurring calcium borate by fusion with sodium carbonate and extraction with water of the more soluble sodium borate from the residual calcium carbonate. Other sodium borates exist besides borax but are less common. Borax is structurally an acid salt, $2\text{NaBO}_2 \cdot 2\text{HBO}_2$, which has lost one molecule of water of constitution but practically is an alkaline salt, hydrolyzing in aqueous solution to give a slightly alkaline reaction. In addition to USP, quotations cover the technical grade in fine and coarse granular, crystalline, powder, and 99.5% forms.

It is packed in barrels or bags as well as being sold in bulk. USP borax contains 52.32-54.92% of anhydrous sodium tetraborate, $\text{Na}_2\text{B}_4\text{O}_7$, corresponding to not less than 99% of the decahydrate.

ANHYDROUS BORAX or BORAX GLASS is also sold in bags and bulk. As a preservative borax is not permitted in food products. It is used in medicine as a mild antiseptic. Other uses are in ceramics, glass, glazes, solders, detergents, fluxes, etc.

SODIUM METABORATE, NaBO_2 , or as often designated, $\text{Na}_2\text{B}_2\text{O}_4$, is a colourless, crystalline powder obtained when equivalent molecular weights of sodium carbonate and borax are heated together to the fusion point. Granular forms of the tetrahydrate and octahydrate formed on crystallization are quoted in bags and barrels. It is soluble in water, forming a very alkaline solution. Sodium metaborate finds application in photography and, in general, is another member of the family of salts used for their hydrolysis alkalinity." It is stated in the above

quoted first paragraph that sodium borate or borax, $\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$, is a naturally occurring product, Rasorite, which is purified by crystallization to give varying grades. It is also stated therein that Borax is obtained from naturally occurring calcium borate by fusion with sodium carbonate and extraction with water of the more soluble sodium borate from the residual calcium carbonate.

9. The extracts of various technical books and the opinions of the experts given in the affidavits and reports, filed by the appellants show that the Kernite or Rasorite-46 having the chemical composition $\text{Na}_2\text{B}_4\text{O}_7 \cdot 4\text{H}_2\text{O}$ is a borate natural mineral substance. The first paragraph of the quotation given in the preceding para of this order states that borax having $\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$ is a "Naturally occurring product".

Therefore, this as well as Kernite or Rasorite-46 having $\text{Na}_2\text{B}_4\text{O}_7 \cdot 4\text{H}_2\text{O}$ fall within the purview of Tariff Heading 25.01/32(1) of the Customs Tariff Act, 1975. Note 1 in Chapter 25 of the Customs Tariff Act, 1975 reads as follows :- "1. Except where the context otherwise requires, this chapter is to be taken to apply only to goods which are in the crude state, or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical process (not including crystallization) but not calcined or subjected to any further process other than a process specially mentioned in respect of goods described in Note 3." According to this Chapter Note 1, Borate subjected to the process of crystallization will not be classifiable under Chapter 25 of the Tariff. The test report incorporated on the reverse of the Bill of Entry does not indicate that the borate concentrate has undergone the process of crystallization. The test reports read as follows :- "The sample is in the form of white coarse powder. It is sodium borate containing water insoluble matter (Silica)." (ii) As stated in the findings of Assistant Collector in Appeal No. C/186/89-C: "The sample is in the form of dull white granular powder. It is mainly composed of sodium borate and small amount of silicious matter." The imported goods in dispute are classifiable under Chapter 25 of the Tariff with the benefit of Notification No. 147/76-Cus., dated 2-8-1976.

10. In the light of the above discussions, the impugned orders are set aside and the appeals are allowed.

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