Synthochem Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-11-1991

Reported in : (1992)(37)ECC99

Appellant : Synthochem

Respondent : Collector of Customs

Judgement :

1. The delay in filing the Supplementary appeals is condoned after hearing both the parties.

2. The appellants have challenged the order-in-appeal No. 70 to 80-Ind/89 dated 21-8-1989 passed by the Collector of Customs (Appeals), New Delhi who has allowed the Revenue's appeals filed under Section 129(4) of the Customs Act and has set aside the order-in-original passed by the Assistant Collector of Customs and Central Excise, Indore. The Assistant Collector of Central Excise, Indore had allowed eleven refund claims of the appellants in respect of excess duties paid on Gallic acid NF 99.5% purity on the ground that the Gallic acid NF of pharmaceutical grade falls under subheading (13) of Heading 29.01/45 of the Customs Tariff and attracts basic customs duty of 60% ad valorem and is exempted from C.V. duty vide Notification No. 234/82-C.E., dated 1-11-1982 as amended.

2A. The learned Collector in the impugned order has held that there is no indication that the goods have prophylactic or therapeutic value and are used solely and predominantly as drugs. He has held that Gallic acid NF would not ipso facto have prophylactic or therapeutic value or be used solely or predominantly as a drug. He has rejected the claim relying on the BTN Explanatory Notes which refers to the use of the goods in the preparation of dyes and inks, in photography, in tanning as Mordant etc. and reference to BTN Explanatory Notes to the fact that main salts and esters of Gallic acid include (1) basic bismuth Gallic which is an amorphous powder, lemon yellow, odourless, astringent and absorbent, used in medicine; and (2) Methyl Gallic which is used as a disinfectant and astringent and also in opthamology. He has held that the goods imported are only Gallic acid and not its salts and esters and not of prophylactic or therapeutic value for the purposes of sub-heading (13) of Heading 29.01/45 of the Customs Tariff. The appellants' reliance on Merck Index was also rejected as Merck Index also indicated the use of the imported goods in the manufacture of Gallic acid esters, for ink, as photographic developer, in tanning and in few other items. He has however, noted the therapeutic category of Gallic acid for use as astringent and styptic and therapeutic category (Veterinary) for use as intestinal astringent, but as the imported goods had other uses, the learned Collector held against the appellants' claim and allowed the Revenue's appeal by denying the classification under sub-heading (13) of Heading 29.01/45 of Customs Tariff. He has held that the salts and esters of the Gallic acid i.e.

therapeutic category Gallic acid having specific therapeutic or prophylactic properties only would go under sub-heading (13). He further held according to note 3 of Chapter 29 Gallic Acid NF would go under sub-heading (10) and only salts and esters thereof, would qualify for classification under sub-heading (13). He also held that it was Rule 3(a) and not Rule 3(c) of the Interpretative Rules which would apply to the facts of the case.

3. The appellants in these appeals have contended that the said finding of the Collector (Appeals) is erroneous and the conclusions are not sustainable. It is their contention that the goods being of NF grade (i.e. pharmacopoeial grade) would clearly answer the tariff description of Heading 29.01/45 (13) which reads - "Pharmaceutical Chemicals that is, chemicals having prophylactic or therapeutic value and used solely or predominantly as drugs, not elsewhere specified." They

also relied on the Tariff Advice No. 51/79 dated 10-9-1979 and the decision at the Collectors Conference dated 26-6-1976, issued in respect of Thymol, which has application both in medicine as well as perfumery. Thymol of Pharmaceutical grade would fall under sub-heading (13) of 29.01/45. If it is not of pharmaceutical grade, then it would fall under sub-heading (11) of Heading 29.01/45 as aromatic chemical.

The appellants have contended that the same analogy would apply in their case as well.

4. They have also relied on the Explanatory Notes to Merck Index which has defined the terms used in it, to explain about Monographs, in terms of Monograph number, Title, Chemical abstracts, Name(s); Alternate names, Trade marks, Emperial formula, Literature references, structure, physical data, Derivative of title compound and Therapeutic Category (in humans), Therapeutic Category (Veterinary). The Explanatory Note states that as regards - "Use - Specific uses which are not of a medical or veterinary nature are described here.

Therapeutic Category - For this edition, the medical editors have followed as closely as possible the categories of activity proposed by the USAN Council to describe the major therapeutic indications of drugs.

Therapeutic Category (Veterinary) - The Veterinary staff has provided short descriptive phrases detailing the major veterinary applications.

5. On the basis of these explanatory notes, the appellants have submitted that the details pertaining to the goods have been collected independently by experts of those lines and the different uses given against their imported goods should not have in any way compelled the learned Collector to have rejected the authority of Merck Index. It is their contention that the Merck Index clearly shows that Gallic Acid itself has therapeutic use and value. In the Merck Index, under the monograph "Gallic Acid" and under sub-heading "Therapeutic category", it is mentioned "Astringent, styptic". Therefore, "Gallic Acid NF (of pharmacopoeial grade), the imported goods are a drug having therapeutic use and value as "Astringent" and "Styptic". The description of Gallic acid in Merck Index at page

4187, Item 4190 is given below - "3, 4, 5 - Trihydroxybenzair acid C7 H6 O5 mol wt 170.12 C-49.42%. H 3.55% O 47.2% obtained by alkaline or acid hydrolysis of the tannins from mutgalls; also by enzymatic hydrolysis using spent broths from Pencilillium graucum on Asper-gillus niger which contain tannase; Haias, Huang Hai No. 7,51 (1946), C. A. 42, 39011 (1948) Cochrane.

Econ Bat 2,145 (1948) Toth, Henster Acta chim Acad Sci Hung 2,209 (1952) Preparation from tannin containing materials; Krueger et al.

US pal 2,723,992 (1955 to Mallinckrodt); Synthesis from aliphatic materials; Shipehandler et al. J. Chem Soc Perkin Trans 11975 1400 Biosynthesis Hasiam et al J. Chem Sec 1961 1854 Needles from abs methanol or chloroform dec 234-240 On gram dissolves in 87 Ml water 3 ml boiling water, 6 ml alcohol, 100 ml ether, 10 ml glycerol, 3 ml acetone, practically insol in benzene chloroform, petr ether, protect from light I Dsc in rats 4g/kg.

Incompat: Ferric salts (bluish black ppt) chlorates, permangansic ammonia, lead acetate, alkali, hydroxides and carbonates oprom in soln silver salts oxidizing agents spirit nitrous other.

Use - Manual gallic acid esters (antioxidants, see Propyl Gallate) pyrogallol, ink dyes, as photographic developer, in tanning, in testing for free mineral acids, dihydrozyacetone and alkaloids.

5. The reference to Gallic acid in Condensed Chemical Dictionary, 11th Edition at page 550 is also relied upon which is as under - Properties - Colourless or slightly yellow crystalline needles or prisms, soluble in alcohol and glycerol sparingly soluble in water and ether; d 1,964 mp 222-2400.

Derivation - Action of mold or solutions of tannin or by boiling the latter with strong acid or caustic soda.

Use - Photography, Writing ink, dyeing, manufacture of phrogallol, tanning agent and manufacture of tannins, paper manufacture, pharmaceuticals, engraving and lithography analytical reagent".

6. They have further contended that a given chemical may be available in pharmacopoeial grade as well as in non-pharmacopoeial grade. A chemical may accordingly have different uses according to its grade. Pharmacopoeial grade being a drug, while non-pharmacopoeial grade having different uses. It is their submission that merely because a chemical has non-pharmacopoeial uses other than drug, it should not have compelled the Collector to reject their claim, when admittedly without dispute, the imported goods are a pharmacopoeial grade, for classification and benefit of notification as claimed by them. The Collector's reliance on BTN to deny them the benefit is not sustainable.

7. They have relied on Rule 3(c) of the Rules of Interpretation of Customs Tariff for specific classification under sub-heading (13) of Heading 29.01/45.

8. We have heard Shri Jaydeep Patel, learned Advocate for the appellants and Shri L. N. Murthy, learned DR for the Revenue. Shri Jaydeep Patel urged the grounds made in the appeal and relied on the following rulings -Arun Agencies, Madras v. Collector of Customs, Madras 1984 (17) ELT 216; Rakesh Enterprises and Anr. v. Union of India and Anr. 1986 (25) ELT 906Collector of Customs, Bombay v. Gufic Pvt. Ltd. 1990 (45) ELT 280 (Tri.) 9. Shri L. N. Murthy, learned DR submitted that the Gallic acid should be used solely or predominantly as drug to qualify for classification and for benefit as claimed. As Gallic acid is not USP and not predominantly used as a drug, the appellants are not entitled for relief and the impugned order is sustainable.

10. We have carefully considered the submissions made by both the sides and perused the records. The learned Collector has proceeded on an erroneous presumption in this matter. A chemical may have several uses but that by itself will not get disqualified for classification or for the benefit under the notification. So long as the imported goods are pharmaceutical chemicals having prophylactic or therapeutic value and the material imported has been used solely or predominantly as drugs; it gets qualified for classification.

This has been the settled law as laid down by the Tribunal in the ruling relied upon by the learned Advocate noted above.

11. In this case admittedly, the goods imported are Gallic acid NF conforming to the standard prescribed in American Formulatory which is one of the standards prescribed and Internationally accepted pharmacopoeial for drugs. Gallic Acid NF has therapeutic value and it is used as an astringent. The appellants are manufacturing Trimethoprim I.P. from the Gallic Acid NF and are holding necessary drug manufacturing licence. The mention of other users against the Gallic acid in Merck Index as well as in the BTN Explanatory Notes under Chapter 29 will not disqualify the impugned goods from the classification under sub-heading (13) of Heading 29.01/45 of Customs Tariff. The situation would have been otherwise, if the Gallic Acid NF not conforming to pharmaceutical standards had been imported by the appellants and on that basis, claimed the classification as pharmacopoeial chemicals. The reasoning and grounds made out by the appellants are quite sound and they have shown that the imported goods are being utilised for manufacture of drugs which are used for prevention of diseases in human beings or animals qualifying for exemption under Notification No. 234/82-Cus., dated 1-11-1982. Rule 3(a) of Rules of Interpretation of Customs Tariff is applicable to the facts of the case as it is more specific to cover the goods in the instant case. Reasoning given by the Collector is not sustainable and they are liable to be set aside by allowing the appeal. Ordered accordingly.