

Anand Synthochem Pvt. Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-29-1983

Reported in : (1989)(43)ELT477TriDel

Appellant : Anand Synthochem Pvt. Ltd.

Respondent : Collector of Customs

Judgement :

1. The captioned appeals were initially filed as revision applications before the Central Government and have come as transferred proceedings, in terms of Section 131-B(2) of the Customs Act, 1962, to this Tribunal for disposal as if they were appeals filed before it.
2. The issue involved being the same in both the appeals, they are disposed of by this common order.
3. The issue is whether 3, 5-Xylenol imported by appellant was entitled to exemption from the levy of additional duty of customs in terms of Notification No. 55/75-Central Excises dated 1-3-1975, as covered by the entry : "All drugs, medicines, pharmaceuticals and drug intermediates, not elsewhere specified." 4. The appeals were heard on 18-11-1983. Shri Rajadhyaksha, the Counsel for the appellants, brought to our notice that two other appeals - 529/80-C and 187/77-C of the appellants involving the same issue stood decided by the Tribunal in favour of the appellants vide orders dated 18-3-1983. He submitted that, following the said decisions, the present appeals should also be allowed.

5. Shri A.K. Jain, on behalf of the Department, contended that, in the earlier decisions, the Tribunal had not said that PCMX (Parachlorometaxylenol) and DCMX (Dichlorometaxylenol) were drugs. For a substance to be a drug intermediate, it must be relatable to a drug and it must be an "intermediate". DCMX and PCMX were used in antiseptic and germicidal preparations such as Dettol. These were not drugs, nor known as drugs. The appellants had not established their claim and the appeals should, hence, be rejected.

6. Shri Rajadhyaksha, in reply, submitted that the Appellate Collector had rejected the claims not because he was in doubt about the use of the chemical in the manufacture of drugs but because such use was not, according to him, the principal use. He also referred to extracts from British Pharmacopoeia on PCMX and DCMX. He also relied on the decisions reported as 1982ELT721 In Re: Hindustan Organic Chemicals Ltd., and 1982 ELT 786 In Re : Shasun Chemicals (Madras) Pvt. Ltd. 7. We have considered the submissions of both sides. We would be loath to differ from the decisions already given by the Tribunal on the very same substance unless there are compelling reasons.

8. Hawley's "Condensed Chemical Dictionary" (10th edition) at page 1101 describes the uses of Xylenol which-nomenclature takes in the isomer 3, 5-Xylenol. Among other uses, is the use as "disinfectants, solvents, pharmaceuticals, insecticides and fungicides". It cannot, therefore, be disputed that 3, 5-Xylenol finds use as pharmaceutical.

"Pharmaceutical" according to the Chamber's 20th Century Dictionary means a chemical used in medicine. PCMX and DCMX, products derived from 3, 5-Xylenol, are described in the publication (British Pharmacopoeia, British Pharmaceutical Codex, Merek Index, Martindale's Extra Pharmacopoeia) referred to by the appellants. The use is shown as antiseptic and germicide. PCMX is shown as a disinfectant of low toxicity which is active against streptococci, used chiefly for wounds, external use in obstetrics, post-operative skin disinfection etc. DCMX is described as a bactericide with action similar to that of PCMX and used for the same purposes. There is thus little doubt that 3,5-Xylenol is a pharmaceutical chemical.

9. We do not, therefore, see any reason to come to a conclusion different from the one reached by the Tribunal in the orders in appeals 529/80-C and 187/77-C.10. We allow both the appeals. The consequential relief shall be granted to the appellants within three months from the date of communication of this order.

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