

**Paramount Petrochemicals Vs. Collector of Customs**

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

**Decided On :** Apr-06-1994

**Reported in :** (1994)(71)ELT1041TriDel

**Appellant :** Paramount Petrochemicals

**Respondent :** Collector of Customs

**Judgement :**

1. This is an appeal filed by the assessee against the impugned order dated 30-6-1992 passed by the Collector of Customs (Appeals), Ahmedabad.
2. The appellants had imported a consignment of Waste Oil (used Lubricating Oil) through Kandla Port and had filed Bill of Entry No.F-67 on 9-1-1991, claiming assessment under Customs Tariff Heading 3823.90, alongwith benefit of Notification No. 47/90-Cus. and under sub-heading 3823.00 of Central Excise Tariff for C.V. duty. They sought clearance of this consignment on the basis of their REP Licence No.3430592 dated 25-10-1990 in terms of para 192 of the Import-Export Policy 1990-93. The sample of the imported consignment was chemically examined. According to the test report, it was found to contain carbonaceous matter and mineral oils, whose content was more than 70% by weight, with its flash point above 94C. It was free from water.

Based upon the test report, the Assistant Collector as per his order has held that the goods in question are correctly classifiable under Heading 2710.00 of Customs Tariff Act, read with Notification No.35/90-Cus. and under subheading 2710.60 of

the Central Excise Tariff, chargeable to duty at 40% (basic) + 50% (Aux.) + Rs. 3,675/- per MT (CVD) + 5% (SED). The Assistant Collector has also confiscated the consignment under Section III(d) & (m) of Customs Act, 1962 for violation of the conditions of Para 5(3)(iii) of the Import (Control) Order, 1955 (17/55 dated 7-12-1955), read with Section 3(2) of Import-Export (Control) Act, 1947, since the imported goods are not new, being used oil or waste oil. Moreover, these goods are not covered by Appendices 3 & 5 Part A and are exclusively covered vide Entry No.1(11) of Appendix 5B, which can be imported only by a canalising agency. However, he has given option to the party to redeem the consignment on payment of fine of Rs. 13,000/-. It was contended by the appellants before the Collector (Appeals) that they are a registered small scale manufacturer for re-refining of used lubricating oils, for which, they had imported waste oil/used oil as an input; that the test report is vague and it does not indicate the exact percentage of the mineral oil as well as the flash point; and this waste oil is more appropriately covered by residual entry of sub-heading 2710.99 of the Central Excise Tariff. The licence produced by them covers the import of the consignment in question; and they have not contravened the provisions of Imports and Exports (Control) Act. On considering the submissions made by the appellants the Collector (Appeals) held that waste or used lubricating oil could be converted into lubricating oil by recycling or re-refining. Thus, the waste oil is quite distinct and different from the lubricating oil covered by sub-heading 2710.60 of CETA, 1985. As such, the waste oil is appropriately classifiable as base oil for the manufacture of lubricating oils under sub-heading 2710.95. As regards violation of the provisions of Import & Export Act, 1947, he held that the imported goods are liable to confiscation for want of valid import licence as well as for importing old or used goods.

3. Shri Sunder Rajan, learned Consultant appearing for the appellants submitted that he prefers to reiterate the grounds of appeal since the issue has been covered by the decision of the Tribunal in the case of Ganesh Oil Mills v. Collector of Customs, Kandla, reported in 1994 (69) E.L.T. 490.

4. Shri Sharad Bansali, learned SDR appearing for the Revenue submitted that the matter has been squarely covered by the decision as cited above, on both the issues of classification<sup>1</sup> as well as of valid licence and furthermore the claim of the

appellants has been rejected by the Tribunal in the very appellants' case as per Order No. 361/93-C, dated 10-11-1993 in appeal No. C-1902/92-C filed by the Department.

5. We have considered the matter. We find that this issue had come up for consideration earlier in the said case of Ganesh Oil Mills and on consideration of the similar facts and circumstances, the Tribunal held that since the test report shows mineral oil content of imported goods was in excess of 70% by weight and its flash point was over 94C and in view of the fact that the goods had the characteristics of Lubricating Oil, the items in question are covered by the specific Heading 2710.60 of the Central Excise Tariff in preference to the residuary Heading 2710.99. It was also held that import of used lubricating oil was not permissible under O.G.L. in terms of Section 3(2) of the Import-Export (Control) Act, 1947. Since the issue has been well considered we are not inclined to take a different view. Following the precedent, we hold the issue accordingly by dismissing the appeal.

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