

**Chokhani Associates Vs. Collector of Customs**

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

**Decided On :** Aug-18-1994

**Reported in :** (1994)(73)ELT925TriDel

**Appellant :** Chokhani Associates

**Respondent :** Collector of Customs

**Judgement :**

1. This appeal arises from the order-in-Appeal dated 29-1-1993 passed by the Collector (Appeals), Bombay.
2. The question that arises for determination in this appeal is the correct classification of the product described as "ROVIMIX - Stay C(L Ascorbyl-2 Polyphosphate)". The lower authority had held that this product is not premix but are derivatives of Vitamin C, and therefore, held it to be classifiable under sub-heading 2936.27 of the CTA, 1975, as derivatives of Vitamin C and not under sub-heading 2309.00 of the CTA, 75, as premixes meant for use in animal feed.
3. The Id. Collector has noted in his order the report of the Deputy Chief Chemist vide TO. No. 250 dated 12-10-1992 and the literature relied by the importer and basing on the said material has held that the goods are not premix and hence not classifiable as a preparation of a kind, used in the animal feed.
4. When the case came up for hearing, the appellant has sent in their written submission and has desired their case to be heard on merits.

5. Relying on the literature, the appellants contend that the goods in question are a compound composition consisting of L. Ascorbyl i.e.

Vitamin C and tri, di and mono phosphates. They also rely on the endorsement of Asstt. Drug Controller on reverse of the Bill of Entry that the goods are for manufacture of poultry feed supplements only.

They further submit that as per HSN Explanatory Notes at page 177 under heading 'C', it is provided that compound composition of vitamins and phosphates which are added to compound feeds i.e. those which are used in preparation of Feed Supplements are covered under Tariff Heading 2309.90 as "preparation of a kind used in animal feeding".

They further state that the product literature under the caption 'Application data (I)- Mixability' speaks of 'Mixability of Rovimix Stay-C in a Compound Feed' and gives the proportions in which it is added directly in final feed as premix. Thus, the product is mixed/added in compound feeds as a premix and hence it should be so considered. They further contended that the Id. Collector has totally based his finding on the Deputy Chief Chemist's report, without his own application of mind and hence the order is bad in law and seek remand of the case. It is further pleaded that the technical opinion of the Deputy Chief Examiner's report was not furnished to them and hence there is a violation of principles of natural justice. They also rely on the ruling rendered in the case of Ranbaxy Laboratories Ltd. v. Collector of Central Excise, New Delhi 197. They also submit that there is a conflict between the judgment rendered in the case of Ranbaxy with that of the judgment rendered in the case of Glaxo India Ltd. v. CCE as reported in 1992 (60) E.L.T. 124 on the scope and interpretation of Chapter Note 23 and hence the matter is required to be resolved by a Larger Bench. In their reply dated 9-11-1992 to a query raised by the Asstt. Collector by his Memo No.32019 dated 2-11-1992, the appellant had submitted that Heading 2936.27 refers to 'Vitamin C and its derivatives', and that this item is not a Vitamin C. It is a composition of Vitamin C and Phosphates and therefore, relying on the HSN Explanatory Notes, they have submitted that what is included in sub-heading 2936.27 are only Vitamin C and its derivatives and not a composition of Vitamin C and Phosphates. They submit that

such a composition of Vitamin C and Phosphates which is added to animal feeds, as per the HSN notes clearly covered under Heading 2309.90 6. We have heard Shri Somesh Arora, Id. JDR for the Revenue. He brought to our notice that Note of Chapter 23 clearly states that what is included in Heading No. 23.09 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing. Therefore, he submitted that as per this Note, a product should have been of a kind obtained by processing vegetable or animal materials and not one arising from Chemicals, having separate chemically defined organic compounds, whether or not containing impurities. He submitted that the rulings cited by the appellants are not directly on the controversy and therefore, both the headings are not appropriate for the purpose of classification; in view of the fact that sub-heading 2936.27 refers to Vitamin C and its derivatives and further more Chapter 29 refers to organic chemicals having separate chemically defined organic compounds whether or not containing impurities.

7. We have carefully considered the submissions made by both the sides and have perused the written submissions including the product literature, the report of the Dy. Chief Chemical Examiner and the citation referred before us. The appellants have raised a ground of denial of principles of natural justice in this case inasmuch as it is their submission that a copy of the Dy. Chief Chemist's report has not been furnished to them. It is also their plea that the case has been decided without giving them hearing and therefore, they plead for remanding this matter, besides making a plea that there is a conflict between the two citations of the Tribunal and it is required to be referred to the Larger Bench. The Id. JDR has submitted that Chapter 23 under which the appellants are seeking classification, is not appropriate for the reason that the Heading 2309 will cover products obtained by processing vegetable or animal materials. On perusal of the Note to Chapter 23, we are impressed with this argument of the Id. JDR and we note that it is not the case of the appellants that the product has been obtained by processing vegetable or animal materials.

Therefore, Chapter Heading 23.09 does not appear to be an appropriate classification. As regards the classification done by the department under subheading 2936.27, it is noticed that this heading refers to "Vitamin C and its derivatives". It is the plea of the appellants that the item is a composition of Vitamin C and phosphates and such composition is excluded by virtue of HSN Notes. They have also contended that the Id. Collector has merely quoted the Dy. Chief Chemist's report and merely followed it without applying his mind and therefore, such an order is not sustainable in view of the ruling rendered by the Tribunal in the case of U.P. Twiga Fibre Glass Ltd. v.CCE as reported in 1990 (47) E.L.T. 455. This plea of the appellants has got a force. The order has been passed ex parts and it does not appear on records that the copy of the Dy. Chief Chemist's report had been furnished to the appellants. As can be seen from the order, the Id. Collector has relied upon the report and has upheld the classification resorted to by the lower authorities. Therefore, the order suffers from non-application of mind. It is also noticed that the product under Chapter 29 has to be classified as per the detailed chapter notes. In that view of the matter, the plea taken by the appellants for remand of the matter is well sustained. Therefore, we remand this case to Collector (Appeals) for de novo adjudication. The appellants should be heard before passing final order. Thus, the appeal is allowed by remand.

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