

Collector of C. Ex. Vs. Aaron Pharmaceuticals (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-02-1994

Reported in : (1994)(74)ELT241TriDel

Appellant : Collector of C. Ex.

Respondent : Aaron Pharmaceuticals (P) Ltd.

Judgement :

1. This is a departmental appeal against the order of Collector (Appeals), Bombay dated 7-2-1986.
2. The learned D.R. stated that the appellants are manufacturers of a product called "Aprot". It is manufactured in 200 ml containers and 50 ml containers.
3. The respondents filed their classification lists under TI 68 claiming exemption under Notification No. 104/82. While holding it as classifiable under TI 68 the Assistant Collector denied the benefit of Notification Nos. 104/82 and 234/82.
4. The Collector (Appeals) allowed the respondents' appeal treating the item as a prepared and preserved food under Tariff Item 1B eligible for exemption under Notification No. 17/70.
5. Learned D.R. stated that Learned Collector (Appeals) has erred in doing so. The Tariff Item No. 1B of GET deals with P & P food put up in unit containers. The term 'food' is not defined under TI1B. However, Government of India, in its order in revision No. 702/80 in the case of Asian Chemicals Works, reported in 1982

(10) E.L.T. 609A (GDI), has relied upon the observations of Justice Bose, in the case of State of Bombay v. Veer Kumar - AIR 1952 SC 335. So far as the word (food) is concerned, it can be used in a wide as well as narrow sense depending upon the context and background. Even in popular sense when one asks another whether you had food one means the composite preparation which normally goes to constitute a meal-curry-rice, cooked vegetable etc.

One does not usually think separately of the different components which enter into their making or of various condiments and spices and vitamins, any more that one would think of separating in his mind the purely nutritive elements of what is even eaten from their non-nutritive elements. The judicial pronouncements on interpretation of the statute on taxation also supports the view that the terms P or P food under TI 1B should be interpreted, not in a technical sense, but according to general usage and how it is known in the trade. From the manner in which such products are to be administered or taken, they cannot be called as 'food'. A careful study of the literature pertaining to these products, their labels, manner of marketing, canvassing etc. indicate that they are used as supplement to diet or as food supplement. The food supplement cannot be equated with foods on the analogy of department's view that animal food supplements are different from animal food. This view has been upheld by CEGAT also in one of the cases. Taking into account the various products covered by tariff description under Item No. 1B of GET and the specified items described in the notification issued under Rule 8(1) may be held that the product in question is not P or P food & therefore will fall under TI 68 of CET. Under TI 68, various kinds of food products and food preparations are exempted under Notification No. 234/82, dated 1-11-1982 as amended. However the product in question is food supplement and the food supplement cannot be treated as food product or food preparation; hence it will not be eligible for exemption under the notification.

6. According to the respondents their product is neither drug nor a medicine. It was their contention that their product is a food product without any maltextract, although it was in the nature of a food supplement. It was also their contention that similar products manufactured by other manufacturers were classified under Tariff Item 1B and exempted from payment of duty under Notification No. 17/70 as for

instance the products known as protons, Protoctons Tonami, Alprovit, Laproti and they were accordingly entitled to a similar benefit.

7. The respondents would like to emphasise that the composition of their product was similar to that of Alprovit and spert.

8. Learned Counsel for respondents also drew attention to HSN Chapter 21 and stated that Heading 21.06 covers : Sub-heading 21.06.10 covers - "Protein concentrates and textured protein substances".

This heading includes Protein Hydrolysates consisting mainly of a mixture of amino-acids and sodium chloride used in food preparations (e.g., for flavouring).

He argued that the product in question was a food preparation of this type as it contained Protein Hydrolysates. He emphasised that this shows that the product was a food preparation which was classifiable in the old tariff under 1B 'Prepared or Preserved food' and exempted by virtue of Notification No. 17/70 date 1-3-1970 as it was not hit by any of the excluded items shown in the schedule thereto.

9. Alternatively, if it was considered as classifiable under T168 then also it will stand exempted by virtue of Notification No. 234/82 (as amended) since the schedule exempts all kinds of food products and food preparations and it is not hit by the proviso.

10. We have considered the above submissions. We find that the product in question is a preparation in the nature of a tonic normally taken as food supplement. However this preparation is not of a type normally considered as 'Prepared or Preserved foods' but in the nature of a synthetic product prepared by combining or mixing various chemical ingredients in specified proportions.

11. In the post-February 1986 tariff such 'tonic beverages' have been specifically excluded from Chapter 30 'Pharmaceutical products' by Chapter Note I(a) which reads as follows : (a) Foods or beverages (such as, dietetic, diabetic or fortified foods, food supplements, tonic beverages and mineral waters) 13. Chapter Note 5 of this chapter states that Heading No. 21.07, inter alia, includes: and lists various other types of preparations covered by this chapter, including preparations for use,

either directly or after processing, for human consumption. This was obviously based on HSN. Therefore, Learned Counsel's arguments would have carried greater weight if the new tariff based on HSN was applicable.

14. As it is, however, we are concerned with the old tariff and could at best draw upon the ratio of the HSN only to the extent of recognising that the product was a tonic beverage of a type which could be considered a miscellaneous edible preparation. So far so good but under the old tariff what we have to see in the first instance is as to whether the product could be considered a 'prepared or preserved food'.

15. The item is obviously not of a type normally considered as a prepared or preserved food. In fact it has not been shown to be such a product at any stage. The Notification No. 17/70 would have been or could have been attracted only if this basic requirement was satisfied and not otherwise. Further, as such food supplements which were in the nature of food preparations not elsewhere specified were not covered by 1B and in the absence of any other suitable heading were classifiable under residual Item 68 only.

16. It is noteworthy that initially the appellants had themselves maintained that their product was classifiable under Tariff Item 68 and the Assistant Collector had also classified it under TI 68 and correctly so.

17. The question which falls for further consideration in the above context is whether the benefit of Notification No. 234/82 could be extended, in view of the above classification. In this respect it is found that the D.R. is correct in pleading that it is not a food product or food preparation of the type listed in the Schedule to this Notification although it is an edible preparation used as a food supplement.

18. In view of the above discussion the order of Collector (Appeals) is set aside and the department's appeal is accepted. The order of the Assistant Collector is restored and confirmed accordingly.