

**Polychem Limited Vs. Collector of Central Excise**

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

**Decided On :** Dec-14-1994

**Reported in :** (1995)(75)ELT919TriDel

**Appellant :** Polychem Limited

**Respondent :** Collector of Central Excise

**Judgement :**

1. This is an appeal filed against the order of Collector (Appeals), Bombay No. 74/93, dated 5th Oct. 1993.

2. Ld. Counsel stated that the appellants are manufacturers of 'toluene' and the dispute is regarding its classification. The rival entries are 27.07 and 29.02.

3. They filed classification lists from time to time under Chapter 29.

The classification list filed after the budget of 1991 was approved provisionally by the A.C. pending chemical test.

4. On receipt of the test report the department sought to alter the classification from 2902 to 2707.20.

5. They replied to the show cause notice and requested for re-test. On re-test also the Chief Chemist reported that the sample does not satisfy the parameters for 'toluene' as per HSN explanatory notes under Heading 29.02 aromatic hydro carbons.

6. The Asstt. Collector has held in his order that the product cannot be said to be chemically defined and easily recognisable as a separate chemical substance and therefore it was classifiable under 27.07.

7. It was their contention that A.C. had not followed the relevant Chapter Notes and Section Notes in the Tariff. It was also their contention that there is no definition in the excise tariff of a separate chemically defined compound.

Separate chemically defined organic compounds, other than pure methane and propane which are to be classified in Heading No. 27.11 Except where the context otherwise requires, the headings of this Chapter apply only to: Separate chemically defined organic compounds, whether or not containing impurities.

It has fixed constants such as formula weight, specific gravity, refractive index, boiling point, flash point etc.

9. Chapter Note 1(a) to Chapter 29 covers such compounds whether or not containing impurities. Hence, their product is classifiable under this chapter even if it was found to contain some impurities.

10. In this connection he would like to reply upon the Tribunal's order in the case of CCE, Bombay v. Atul Products and Attic Ind. 1985 (20) E.L.T. 147.

11. Since the rules for interpretation of Customs and Excise Tariff are the same and both are based on HSN therefore, the ratio of the above orders is applicable to their case as well.

12. It was their submission that although HSN explanatory notes can be referred to, the classification has to be determined on the basis of the section notes and chapter notes in the tariff.

13. The Assistant Collector has also not discussed or distinguished the case law cited before him and the Certificate of Bombay University and LIT.14. It was also their submission that three demand notices have been issued prior to the finalisation of the classification list and hence have been issued pre-maturely. The Collector (Appeals) has also erred in holding that 'toluene' is classifiable under

27.01 and denying the benefit of Notification No. 75/84.

15. Ld. D.R. drew attention to the orders in original and the order in appeal and the Chapter Notes and Headings of Chapters 27 and 29; and in particular to Heading 2907.20 'Toluole'.

16. He also drew attention to the chemical test reports and stated that there is no dispute to the effect that the appellants' product has characteristics of 'toluene' but it stands excluded from Chapter 29.02 because it does not satisfy the requirements or parameters for toluene as per HSN explanatory notes at page 335 thereof.

17. It may however be mentioned in all fairness that there is slight difference in the two editions of HSN in this regard and he considers it as his duty to bring this to the notice of the Bench.

18. As regards Notification No. 75/84 there is no evidence to show that they had claimed the benefit of this notification or satisfied the conditions thereof.

19. We have considered the above submissions. We observe that there is no doubt or dispute that Section Notes and Chapter Notes have to be kept in mind and read alongwith the heading for the purpose of classification. While HSN on which the tariff is broadly based (with some variations) is a reliable guide, ultimately the case has to be decided on the basis of the legal provisions of the tariff.

20. Chapter 29 covers separate chemically defined organic compounds, whether or not containing impurities as per Chapter Note 1(a). It is well known and there is no scope for any doubt or dispute regarding the fact that 'Toluene' is a separate chemically defined organic compound but the point is whether the appellant's product is a high purity Toluene or an impure Toluene (mixed with other hydrocarbons).

21. However, once the product was, on chemical test found to have "the characteristics of toluene" it was required to be classified under Chapter 29 (even if contained impurities in traces) unless the product was found to be a mixture or

Toluole covered by Chapter Note 3 of Chapter 27 but the department has not produced any evidence to the effect that it was such a mixture or 'Toluole' whereas the appellants have produced certificates of Bombay University and IIT to show that the product is a high purity toluene (98.7%) with other hydrocarbons in traces.

The department has not challenged the correctness of the certificates and has merely gone by an out dated note of HSN. In this respect, we very much appreciate Id. DR's action of bringing to our notice the difference between the two editions of HSN.22. In view of the above position itself the product was classifiable under 2902.30 (and it was not necessary to go into the case law cited before us).

23. As regards the notification, we find that the appellants have not included it in their prayer for relief in their appeal memorandum and they have only requested for deciding the appropriate classification under Chapter 29.

24. That apart the application of a notification also depends upon the satisfaction of the conditions mentioned therein. In the circumstances while we accept the prayer as per the appeal memorandum and allow the appeal, we may mention before parting that it will be open to the appellants to claim the benefit of notification if any available and for the authorities to consider that aspect and decide it separately at the original level.

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