**Collector of Central Excise Vs. Ultima Search**

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**SooperKanoon Citation** : sooperkanoon.com/8574

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

**Decided On :** Jul-17-1995

**Reported in** : (1996)(81)ELT221TriDel

**Appellant** : Collector of Central Excise

**Respondent** : Ultima Search

**Judgement** :
1. This is Department's appeal against the order of Collector (Appeals), Ahmedabad dated 11-8-1992.

2. The learned Departmental Representative stated that the issue revolves round the classification of a product called Rodenticide. The rival entries are 3808.10 claimed by the Department and 3808.90 claimed by the respondent. These entries read as follows :----------------------------------------------------------------------Heading Sub-head- Description of goods Year Rate ofNo. ing No. duty---------------------------------------------------------------------- 3808.10 - Insecticides, fungicides, 10-2-1987 Nil herbicides, weedicides and 3808.90 - Other 10-2-1987 15%---------------------------------------------------------------------- 3. The learned D.R. argued that since the product is Rodenticide and Rodenticides are not mentioned under Heading 3808.10, therefore, they are excluded from 3808.10 and in the circumstances they could only be classified under 3808.90.

4. The respondent stated that Rodenticides are specifically mentioned in Heading 38.08 along with insecticides and fungicides etc.

Furthermore, 3808.10 specifically mentions pesticide and it was their contention that Rodenticide is a type of pesticide. In this connection, he drew attention to the New Encyclopaedia of Britannica Volume VII which defines pesticide as "any toxic substance used to kill animals or plants that cause economic damage to crop or ornamental plants or are hazardous to the health of domestic animals or man." He also drew attention to the certificate of Government of India, Ministry of Agriculture, No. PS/PAA/1992, dated 12th March, 1992 which states that in chemical it is used to control rates is technically known as Rodenticide which falls under the overall ambit of broad technical term pesticides.

5. He also drew our attention to an extract from Kirk & Othmer's Encyclopaedia of Chemical Technology which describes rodents as pests.

It defines pests as organisms that compete with man for his food supply, damage his possessions, or attack his person and include in this category rodents.

6. He also drew our attention to a pamphlet on rats issued by Food Grain Technologist Research Association of India. It mentions in its introduction that rats comprise a major group of pests which are of great economic importance due to their role in problems of food and health of man. He also our attention to the book "Scientific Guide to Pest Control Operations" by Dr. Lee C. Truman which states that "The present day usage of the term pesticide connotes a much broader concept than has been generally understood for the chemicals used by the pest control specialists. It includes in the term pest the rodents and describes pesticide as any substance or mixture intended for preventing, destroying or controlling any pest. Furthermore, it states that rats are extremely important pests.

7. We have considered the above submissions. We find that the Department has not been able to show that the product is not covered under the Heading 3808.10 in spite of the fact that the word Rodenticide is not mentioned therein for the simple reason that Heading 3808.10 specifically includes pesticides and the technical literature and other material produced by the respondents shows that pesticide is a wider term which includes Rodenticide as well. As such, the Department's appeal is rejected as already announced in the open court at the time of hearing.