

PETITIONER:
TOSHIBA ANAND BATTERIES LTD. ANAND HOUSE, COCHIN

Vs.

RESPONDENT:
COLLECTOR OF CUSTOMS, COCHIN

DATE OF JUDGMENT 20/12/1990

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
KASLIWAL, N.M. (J)
AGRAWAL, S.C. (J)

CITATION:
1990 SCR Supl. (3) 614 1992 SCC Supl. (1) 38
JT 1991 (1) 14 1990 SCALE (2) 1293

ACT:

Customs Tariff Act, 1975: Item Nos. 25.01/32 and 28.01/58-Battery grade Manganese dioxide--Classification for custom duty--Not the ore contents in its crude form but ore contents in the form purified or upgraded by electrolysis.

HEADNOTE:

The appellant-assessee in the appeals is a manufacturer of dry batteries. For this it imports electrolytic manganese dioxide from abroad having a manganese dioxide content of 91%. Its claim is that customs duty is payable on this item under heading 25.01/32(3) of the Customs Tariff Act, 1975 whereas the revenue authority says that the item imported falls under heading 28.01/58. The rate of duty under both the headings is the same, but if the item is classified under 28.01/58 the assessee would be liable to pay countervailing duty as well.

The Assistant Collector's findings that Note 1 for the interpretation of items under Chapter 25, clearly exclude the goods imported by the appellant, were revised by the Collector (Appeals), but confirmed the Tribunal, holding that various grades of manganese dioxide exist and only few are suitable for use as battery grade, that the item imported by the appellant is Electrolytic Manganese Dioxide of very high purity and this chemically pure Manganese Dioxide would qualify for assessment correctly under heading 28.01/58(1), of the Tariff with Countervailing duty under Item 68 of the Central Excise Tariff.

On the question, under which of the two headings in the first schedule to the Customs Tariff Act, 1975 the goods in question fall for the purposes of levy of duty:

Dismissing the appeals, the Court,

HELD: 1. In view of Note 1 to Chapter 25, Item (3) under heading 25.01/32 has to be understood, unless the context requires otherwise to refer to the goods described therein either in their crude state or in a

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purified state provided the processes of purification employed are only mechanical or physical processes, particularly those mentioned in the said note. [619G]

In the instant case, this raises two questions: (1)

whether battery grade manganese dioxide is available in the crude form, and (ii) if the goods in question represent manganese dioxide in a purified form, whether the processes applied for the purification or refinement are the processes permissible under note 1. The evidence on record compels an answer to each of the questions against the appellant. [619H]

2. Although the product imported by the appellant is battery grade manganese dioxide, it does not fail under heading 25.01/32 because it is not the ore in its crude form but is the ore in a form purified or upgraded by electrolysis. Once the applicability of chapter 25 is out for this reason, the only item that can cover the goods in question is heading 28.01/58, since there is no dispute that the item in question is a chemical product or chemical compound. [621C-D]

3. The manganese dioxide imported by the appellant is electrolytic manganese dioxide which is manufactured from the ore by a process of electrolysis. [620C]

4. Purification or upgradation of the manganese dioxide content of crude ore by the process of electrolysis, which is a chemical and not a mechanical or physical process takes it outside the purview of item 25.01/32. [620D]

JUDGMENT: