

CASE NO.:
Appeal (civil) 7145-7146 of 2004

PETITIONER:
Commissioner of Central Excise & Customs, Surat-II

RESPONDENT:
Nirmala Dyechem and Anr.

DATE OF JUDGMENT: 29/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
JUDGMENT

Order

The fact of the case are that the repondent assessee is engaged in a manufacture of various products including a product called "Domex Power Cleaner/Domex All round Home Cleaner." The assessee had been classifying this product under heading 38.08 of the Central Excise Tariff Act as a disinfectant. The claim of the Revenue, however, is that the aforesaid product is liable to be classified under the Central Excise Tariff heading 34.02. The question, therefore, involves in this case is whether the product "Domex Power Cleaner/Domex All Around Home Cleaner" is liable to be classified under heading 34.02 as claimed by the Revenue or heading 38.02 as claimed by the assessee.

Heading 34.02 reads as follows:

"34.02. Organic surface-active agents (other than soap); surface-active preparations, washing preparation (including auxiliary washing preparations) and cleaning preparations whether or not containing soap."

Heading 38.08 reads as follows:

"38.08. Insecticides, rodenticides, fungicides, herbicides anti-sprouting products and plant growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers.)."

The Tribunal in the impugned order dated 22.3.2004 has held that the aforesaid product is liable to be classified as a disinfectant under heading 38.08 and not under heading 34.02.

Before us Dr. R.G. Padia, learned senior counsel appearing on behalf of the Revenue and Mr. Ravinder Narayan, learned counsel appearing on behalf of the assessee, have advanced various arguments.

We need not go into those arguments in great details in view of the order proposed to be passed by us. The question which falls for our consideration, in our opinion, should be considered having regard to the rival contentions of the parties, namely, whether the product is principally used as disinfectant or as a cleaning preparation.

We may also place on record the submission of Mr. Ravindra Narayan that it is sold in undiluted form also and, therefore, may be put in an appropriate heading for the purpose of classification as it is manufactured on the said basis, and hence it should be classified as such and not on the condition in which it is used, which may be in diluted form. On the other hand, we may also mention the submission of Dr. R.G. Padia, learned senior counsel for the Revenue that the word 'disinfectant' in heading 38.08 has to be

interpreted noscitur a sociis, which means that it has to take colour from the preceding words like insecticides, rodenticides, fungicides, herbicides, etc. Dr. Padia's submission is that the expression 'cide' means to kill, and hence the things mentioned in heading 38.08 are all things meant for killing (germs, animals, etc.) and they do not relate to products which are basically meant for cleaning. He further submitted that some cleaning materials may have some antiseptic or disinfectant qualities, but that would not by itself bring the product under heading 38.08, instead it has to be classified under heading 34.02. We regret that the matter has not been examined from this angle.

The question, in our opinion, would therefore, require deeper consideration at the hands of the Commissioner. The matter has also to be considered from the angle whether the product is having active agents, having surface active functions or that is only subsidiary to its main function as a cleaning preparation.

We may also notice that the Tribunal as also the Commissioner have not considered the rules of the interpretation of the schedule as also the explanatory notes, harmonized commodity description and coating system which may possibly provides aids for determination of the dispute. We are, however, not expressing any definite view on the matter, as we are remitting it to the Commissioner. We, however, make it clear that in the facts and circumstances of this cases, the extended period of limitation as provided for in Section 11AC of the Central Excise Act, 1944, shall not apply.

We, therefore, set aside the impugned judgment and remit the matter to the Commissioner for consideration afresh in the light of the aforesaid observations. The appeals are allowed.

The parties shall be entitled to adduce fresh evidence before the Commissioner, if they so desire.