

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6979-6982 OF 2009

C.C.E.C & ST, VISHAKHAPATNAM

.... Appellants

Versus

JOCIL LTD.

.... Respondents

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. The primary issue for consideration in these cases is one of classification under Tariff Items of the Customs Tariff Act, 1975. We are called upon to decide the specific issue as to whether cargo imported is classifiable as non-edible Industrial Grade Crude Palm Stearin falling under Ch. Sub

Heading No. 15 11 90 90 or as “RBD Palm Stearin” falling under Tariff Item No. 38 23 11 12 of the Customs Tariff Act, 1975.

2. The brief facts which give rise to the aforesaid issue are that the Respondent imported Crude Palm Stearin through Kakinada Port and filed Bills of Entry declaring the goods as industrial grade Crude Palm Stearin falling under Ch. Sub Heading No. 15 11 90 90 of the Customs Tariff Act, 1975 [hereinafter referred to as “the Act”] and the bills of entry were assessed provisionally on the basis of the importer's declaration pending receipt of the test results from the chemical examiner. ‘Palm Stearin’, the subject matter of classification in question, was imported through Kakinada port during the period from 26.08.2003 to 28.12.2004. Whereas the Respondent-assessee sought to classify the goods in question under Tariff Item No. 15 11 90 90 of the Customs Tariff Act, 1975 as “Non-edible Industrial Grade Crude Palm Stearin”, the appellant classified the goods in question as “RBD Palm Stearin” falling under Tariff Item No.

38 23 11 12 of the Act, chargeable to duty at BCD 25%, CVD 16% and 4% SAD. Under Tariff Item No. 15 11 90 90, the assessment was charged at BCD 20% and nil CVD/SAD. The Assistant Commissioner of Customs asked the Respondent to pay the differential duty, under S.28 of the Customs Act, 1962.

3. The Chemical Examiner, Visakhapatnam reported that the goods in question were RBD Palm Stearin with an admixture of Palm Fatty Acid Distillate (in short "PFAD") and not crude palm stearin as declared by the importer. After due adjudication process, the Assistant Commissioner of Customs finalized the Bills of Entry by classifying the impugned goods as RBD Palm Stearin falling under Sub-heading No. 3823.11.12 of the Customs Tariff Act, 1975 and demanded the differential duty along with applicable interest. Aggrieved by these orders, the Respondent preferred an appeal before the Commissioner (Appeals). When the dispute in this regard reached the Commissioner (Appeals), the claim of the Respondent was dismissed and the order of the Asst.

Commissioner upheld. However, on appeal to the CESTAT, the Tribunal allowed the same while relying on its decision in the case of M/s Jocil Ltd. & Ors v. The Commissioner of Central Excise & Customs, Visakhapatnam – II.

4. The CESTAT, in determining the appeal, took note of the fact that the Chemical Examiner has only ascertained the free fatty acids of the sample, which comes to 23.2%. According to the Tribunal, since the balance contents of 76.8% have not been considered, it could not be conclusively said that the same is not composed of triglycerides. The CESTAT also relied on the ester value and saponification value registered at the load port (Load Port Analysis) during the time of clearance. The said analysis indicated that the balance is nothing but triglycerides. According to the Central Revenue Chemical Laboratory (CRCL) opinion which was relied upon by CESTAT, Chapter 15.11 covers palm oil and its fractions – this view is also espoused in the HSN Explanatory Notes. Since Palm Stearin falling under 15.11 is a glyceride of fatty acids, the CESTAT concluded that the categorization should

also have to be made under Ch.15.11. As stated hereinabove, reliance was also placed on its own decision in **M/s Jocil Ltd. & Ors v. The Commissioner of Central Excise & Customs, Visakhapatnam – II** reported at **[2008 (225) ELT 540 (Tri-540)]**. Aggrieved by the decision of CESTAT, the appellant has approached this Court by way of Civil Appeal.

5. The appeal was listed for hearing and we heard the learned counsel appearing for the parties who have ably taken us through all the relevant documents on record and also placed before us the various decisions which may have a bearing on the issues raised in the present appeal.

6. Before this Court, learned counsel for the appellant contended that the goods in question are RBD Palm Stearin with Palm Fatty Acid Distillate (PFAD) and hence must be classified under Tariff Item No. 38 23 11 12 of the Act. We may enumerate the arguments put forth by the appellant on this count: -

- a. Tariff Item No. 38 23 11 12 is a specific heading, which must be given preference over a general description as

in Tariff Item No. 15 11 90 90. As per Rule 3(a) of the General Rules for Interpretation of the First Schedule to the Act, when for any reasons goods are *prima facie* classifiable under two headings, the general description must give way to the specific.

- b. In separate test reports in respect of samples drawn from various consignments, the Chemical Examiner, Vishakhapatnam reported that the goods in question are RBD Palm Stearin with PFAD and not Crude Palm Stearin. The report clearly indicates that the substance has been chemically modified, and cannot be called 'crude' in any way.
- c. Reliance on the *Jocil Ltd* case by the CESTAT is contentious as its decision in the same matter has been challenged by the appellant in the HC and is pending.
- d. The Six-digit First Schedule to the Customs Tariff Act, 1975 was substituted by the Eight-digit First Schedule *vide* the Customs Tariff (Amendment) Ordinance, 2003 and this substitution w.e.f. 01.02.2003 has statutory

force. Therefore, the new Schedule would operate over and above the CBEC Circular dated 03.12.2002 and the latter would not be applicable since the new Schedule was not operational at the time of issuance of the Circular. The goods, which were imported between August 2003 and November 2004, should therefore be classified under the Eight Digit Tariff Schedule.

7. On the other hand, the Respondent has maintained that the subject matter in question is industrial grade Crude Palm Stearin falling under Ch. Sub Heading No. 15 11 90 90 of the Customs Tariff Act, 1975. To fortify this conclusion, they have contended that: -

- a. Commissioner (Appeals) erred in not appreciating and applying CBEC Circular dated 03.12.2002. Respondent claims that the circular had distinguished between products which are fractions of Palm Oil classifiable under Chapter 15, and products which are fatty acids classifiable under Chapter 38. The Respondent contends that the distinction between both these

products was the presence of triglycerides, determined by the ester value of the product in question.

- b. The Chemical Examiner did not ascertain the ester value of the goods in the chemical analysis, when it was incumbent on the department to do so. On the other hand, the Report determined free fatty acid, which clearly indicated that the product had triglycerides. When the authorities have thus ignored the CBEC directions, the Respondent contended, the assessment needs to be set aside.
- c. The onus to classify a particular product under a specific heading is on the Department [**Hindustan Ferodo Ltd. v. Collector of Central Excise, Bombay** reported at **1997 (89) ELT 16**]. Therefore, the Department should have had the product chemically analyzed and record a finding that there were no triglycerides in the product. In the absence of the same, the Respondent contends, the order of the authorities deserves to be quashed and set aside.

d. The Commissioner (Appeals) failed to appreciate that the oils were a combination of glycerides and fatty acids. The compound usually has 5% fatty acid and PFAD is subsequently added to satisfy the requirement of free fatty acid of the oil to be above 20% (this is done to ensure that oils which are meant for industrial use are not diverted for edible purposes). Apart from fatty acid content of 25%, the rest, Respondent claims, is triglycerides which have ester value as recorded in the Load Port Analysis (not Chemical Examiner's report].

e. Respondent also claims that its arguments are buttressed by the practice followed in this regard by various other soap manufacturers in the country, where the product in question is classified under Tariff Item No. 15.

8. In order to determine the appropriate nature of the subject matter in question, as well as to adjudicate upon classification of the same under the Act of 1975, we may refer to the sub-headings involved herein: -

1511 Palm Oil and Its Fractions, Whether Or Not Refined, But Not Chemically Modified

1511 10 00 - Crude oil

[...]

1511 90 - Other

1511 90 10 --- Refined bleached deodorised palm oil

[...]

1511 90 90 --- Other

3823 Industrial Monocarboxylic Fatty Acids; Acid Oils from Refining; Industrial Fatty Alcohols

Industrial monocarboxylic fatty acids; acid oils from refining:

3823 11 -- Stearic acid:

-- Palm stearin:

3823 11 11 ---- Crude

3823 11 12 ---- RBD

9. Heading 15.11 covers palm oil and its fractions, whether or not refined, but not chemically modified. According to the Harmonized Commodity Description and Coding System (for short “HSN”) Explanatory Notes developed by the World Customs Organization, Chapter 15 covers vegetable or animal fats and oils and their fractions when used as foodstuffs or for technical or industrial purposes. The

CESTAT, in deciding the issue of classification, has relied upon the opinion of the Customs and Central Revenue Control Laboratory (CRCL) and a Central Board of Excise and Customs (CBEC) Circular dated 03.12.2002 to fortify its conclusions. The CRCL opinion advised that heading 15.11 covers palm oil and its fractions, which include the constituent elements like triglycerides of fatty acids and point fractions obtained by the process of fractionation. The CBEC Circular had distinguished between triglycerides of fatty acids and free fatty acids and went on to state that palm stearin was basically a triglyceride (ester) of fatty acids. Based on this ground, and also on the fact that the report of the Chemical Examiner merely looked at the free fatty acid content and not the ester values to indicate the presence of triglycerides, the CESTAT ruled in favour of the respondent.

10. We are of the considered opinion that the import of the CRCL opinion and the CBEC Circular needs to be understood in proper perspective. The mere fact that the CRCL opinion and the CBEC Circular (No. 81/2002 – dated 03.12.2002) affirm

the chemical composition of palm stearin cannot make a case for its classification under Ch. Sub Heading No. 15 11 90 90. The essential conclusion to be drawn from these two reference documents is that palm stearin, which is obtained from the fractionation of palm oil, is comprised mainly of triglycerides of fatty acids. The question then arises as to whether it would be appropriate to categorize the triglycerides present in the oil, viz. Palm Stearin, under Chapter 15, while bracketing the free carboxylic acids derived during the refining process under Chapter 38.

11. To answer this question, we may analyse the key aspects of classification under Chapter 15 – the chapter covers palm oil and its fractions, which may be refined or unrefined, but the critical condition is that the product must not be chemically modified. The argument that palm stearin, a fraction of palm oil, being comprised primarily of triglycerides of fatty acids should be classified in Chapter 15 by way of exclusion from Chapter 38 which covers industrial carboxylic acids (or in other words, free fatty acids) is compelling, but not decisive.

This argument stems from the interpretation favoured in Rule 3(b) of the General Rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, wherein the essential character of the subject matter determines its classification.

12. We also find that Rule 1 of the General Rules of Interpretation specifically state that “the titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following (subsequent) provision:” The headings are of paramount importance, and as the HSN Explanatory Notes state, the headings are expected to cover the broad ambit of classification since it is impossible to cover all the goods specifically in titles. It is relevant to note that the title of Chapter 15 reads “Animal or vegetable fats, oils, waxes, etc.” and for goods to fall into Chapter 15, there has to be the

element of “edible oil”. Non-edible industrial grade oil cannot by any stretch of imagination be brought within the ambit of Animal or vegetable “edible oil”. However, Rule 3(a) of the General Rules of Interpretation stipulates that the “heading which provides the most specific description shall be preferred to headings providing a more general description”. While it is not practicable to lay down hard and fast rules by which to determine which heading is more specific, the HSN Explanatory Notes state that if the goods answer to a description which more clearly identifies them, that description is more specific where the identification is less complete.

13. In the case at hand, the subject matter in question is specifically identified in Ch. Sub Heading No. 38 23 11 as “Palm Stearin”, and further differentiated as “Crude” and “RBD” in Sub Heading Nos. 38 23 11 11 and 38 23 11 12 respectively. The Explanatory Notes are categorical in affirming the accepted practice that Rule 3(b), which the CESTAT and the Respondent has referred to, shall be used

only if classification under Rule 3(a) fails. In this instance, we are of the considered opinion that the issue of the essential character of the subject matter in question may be resorted to only if identification under Rule 3(a) is impossible. Since the description offered in Chapter 38 certainly attempts to identify 'Palm Stearin' within its ambit, we do not find it necessary to place reliance on the explanation offered by the Respondent.

14. In effect, by contending that free carboxylic acids are classified under Chapter 38, and thus the remaining component from refining process, viz. palm stearin which contains triglycerides, should be shunned to Chapter 15, the Respondent is implying that Chapter 15 is of a residuary nature. This would go against the very grain of rules of classification, as is mentioned in the General Rules of Interpretation, as well as precedents established by this Court.

In **Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India (UOI) and Ors.**, reported at **(1976) 2 SCC 241**, this Court has held: -

“37. [...] When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. [...]

38. It is not for the Court to determine for itself under Article 136 of the Constitution under which item a particular article falls. It is best left to the authorities entrusted with the subject. But where the very basis of the reason for including the article under a residuary head [...] is foreign to a proper determination of this kind, this Court will be loath to say that it will not interfere.”

15. Referring to the essential characteristics of the subject matter would not only be applying contorted logic in arriving at the correct classification but would also amount to ignoring the express identification offered in Chapter 38 of the First Schedule of the Customs Tariff Act, 1975.

16. We are of the opinion that the CBEC Circular needs to be thus harmonized with the Eight-digit First Schedule

introduced *vide* the Customs Tariff (Amendment) Ordinance, 2003. As mentioned before, the Circular had been issued prior to the coming into force of the amended Tariff Schedule and consequently, did not have the latter as its reference point. The goods, which were imported between August 2003 and November 2004, would undoubtedly be classified under the Eight Digit Tariff Schedule and on account of the aforementioned reasons, the subject matter in question will be classifiable under Chapter 38 of the same.

17. Having held thus, it is also important to note that the interpretive powers of this Court are significantly curtailed by the presence of a specific enumeration in Chapter 38 of the Tariff Schedule. This Court, while deciding an issue of classification, can only adjudicate along the lines of settled norms and precedents drawn from statutory interpretation and judicial precedents.

18. For the reasons mentioned hereinabove, we are in agreement with the contentions raised by the appellant and the appeals are allowed. By this judgment, the order of the CESTAT is set

aside, and the decision of the Commissioner (Appeals) affirming the order of the Assistant Commissioner is restored. However, we leave the parties to bear their own costs.

.....J.
[Dr. Mukundakam Sharma]

.....J.
[Anil R. Dave]

New Delhi,
December 15, 2010.

