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**(1990) 01 MAD CK 0050**  
**In the Madras High Court**

Benzex Labs Limited

APPELLANT

Vs

Collector of Customs

RESPONDENT

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**Date of Decision :** 01-01-1990

**Acts Referred:**

**Citation :** (1993) 42 ECC 261 : (1990) 45 ELT 19

**Hon'ble Judges :** Venkataswami, J

**Bench :** Single Bench

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## **Judgement**

Venkataswami, J.—The question that arises for consideration in this writ petition is whether Acetyl sulfonyl Chloride, here in after referred to

as ASC occurring as Item 4 in Appendix 6, List 8, Part I of Import and Export Policy for the period from April, 1985 to March 1988 is the same

as N- Acetyl Sulfonyl Chloride herein after referred to as N- ASC, occurring in Item 276 in Appendix 3 Part A of the same policy Book.

2. The petitioner filed Bill of entry bearing No. 23009 dated 28-4- 1988 through its clearing Agent for the clearance of ASC valued at Rs.

11,26,270/- C. I. F. and sought clearance of the subject goods under Open General Licence Appendix 6, Serial Number (1) read with Serial

Number 4 of list 8, Part I of Import and Export Policy for 1985-88. The respondent rejected the claim of the petitioner to release the subject

goods under O. G. L. as according to him, they fall under N-ASC which require specific licence. Therefore the respondent ordered confiscation of

the goods and levied the fine of R. 3 Lakhs in lieu of confiscation. Aggrieved by the order of the respondent confiscating and levying Rs. 3 Lakhs

as fine in lieu of confiscation this writ petition is filed.

3. The contention of the learned counsel for the petitioner is that ASC flouring

among items under Open General Licence is the commercial name for that chemical, whose technical name is N-ASC, figuring under item 276 in Appendix 3 Part A under the list of limited permissible items and that the levy of fine for the import of ASC under Open General Licence is unsustainable. To support the argument that ASC and N-ASC is one and the same, the learned counsel for the petitioner has produced a clarification, dated 29-1-1988, issued by the Director General of Technical Development (Import and Export Policy Cell). He has also produced a clarification of OGL Imports issued by the Chief Controller of Imports and Exports. In addition to the above, he has also produced certain documents, inter alia, a photostat copy of Advance Licences under duty exemptions scheme given to Plant Organic Limited, Hyderabad dated 7-10-1987 in and by which the Assistant Chief Controller of Imports and Exports has treated both ASC and N-ASC as one and the same. Mr. R. Sashidharan, learned counsel for the petitioner also invited my attention to paragraph 20, sub-paragraph (f) and paragraph 23, sub- paragraph (8) of Import and Export policy for April, 1985 March 1988.

4. Contending contra, Mr. P. Narasimhan, Central Government Standing Counsel submitted that the petitioner on an earlier two occasions imported the very same ASC and the respondents treated the same, as N- ASC coming under Appendix-3 and that therefore his import of the chemical without licence was liable to confiscation. The petitioner took delivery of the goods after paying the fine under protest and the matters are pending in appeals before the Tribunal. While so, against the impugned order of the respondents without exhausting the statutory alternative remedies the petitioner has come to this Court and has filed the above writ petition. Learned Central Government Standing Counsel submitted that the writ petition is liable to be dismissed on the sole ground that the petitioner has got an effective alternative remedy. On merits the learned counsel submitted that a reading of paragraphs 20 and 21 (c) of the policy will show that the respondent is right in treating the goods imported as one falling under Appendix 3. He further submitted that the order of the respondent is not without any basis, but strictly based on an opinion given by Dr. K. Rajagopalan, Professor and Head of the Department of Organic Chemistry, University of Madras and also on the basis of the chemical

examination report of the Custom House laboratory and that therefore the respondent is right in holding that the subject-goods would fall under

Item 276 in Appendix 3. The respondent has the authority to interpret the import policy, as he is vested with such powers to interpret the policy

according to the guidelines set out in the Policy Book. If the petitioner considers that the interpretation given by the respondent is not correct, the

remedy open to the petitioner is to file an appeal and not to straight way come to this Court by way of a writ petition.

5. I have considered the rival submissions and I am of the view that the learned counsel for the petitioner is well founded in his arguments. I shall

give my reasoning immediately.

Item 276 in Appendix 3 reads as follows:

N-Acetyl Sulfonyl chloride

Item No. 4 in List 8, in Appendix 6 (Part-I) read as follows:

Acetyl Sulfonyl chloride

paragraphs 21, 21(c) and 21(f) read as follows:

21. The following principles will apply to the inter-se interpretation of the entries in the various Appendices as well as imports under Open General

Licence :

(c) An Item with a specific description in Appendix 2 Part B or 3 Part A will prevail over an item with a generic description in any of these

Appendices;

(f) any item in Appendices 2,3,5 or 8 with a specific or a generic description, will preclude the eligibility to its import under Open General Licence,

except where the policy allows this clearly".

Paragraphs 23 (3) and 23 (3) (1) are to the following effect :

23 (3) In respect of items other than iron and steel, an Actual user, i.e. any person desirous of importing an item subject to Actual User condition,

may seek clarification from the DGTD (Import and Export Policy Cell) Udyog Bhavan, New Delhi-110 011 about :

(i) the scope of any item in Appendices 1, 2, 3 Part-A, 5, 6, 8 and 10; "From a reading of the above the following conclusion can safely be

reached :

If a particular item finds a place both under the limited permissible item as well as under Open General Licence Item except where the Policy

allows the import under OGL clearly the same has to be imported only on the basis of a licence. In this case if the petitioner succeeds in

establishing that both ASC and N-ASC is one and the same, then, it can be taken there is a clear indication that it can be imported as an item

falling under Open General Licence. In this connection, the clarification issued by the Director General of Technical Development (Import and

Export Policy Cell), dated 29-1-1988 can be usefully referred to :

No. 1 (2)/87/SA/C 2A -576

Government of India

Director General of Technical Development

(Import & Export Policy Cell)

Udyog Bhavan, New Delhi,

Dated : - 29-1-1988.

M/s. Standard Organics Limited, Sapphire

Buildings, No. 5-9-88/2, Fetch Maidan,

Hyderabad - 500 001

Subject :- Clarification for import of Acetyl Sulfonyl chloride (ASC) or N-Acetyl Sulfonyl Chloride.

Dear Sirs,

With reference to your letter No. nil dated 20-1-1988 on the subject mentioned above, I clarify that Acetyl Sulfonyl Chloride (ASC) or N- Acetyl

Sulfonyl Chloride are the various nomenclature of one and same compound i.e. ASC, and is covered under Appendix 6, List 8, Part I against SI.

No. 4 of Import and Export policy for 1985-88 subject to the conditions laid down therein.

Yours faithfully,

(D.K. Roy)

DEVELOPMENT OFFICER.

The above clarification read along with paragraph 23 (3) (i) set above places the matter beyond doubt viz., that ASC and N-ASC is one and the

same. In the counter-affidavit, it has been fairly admitted as follows:

Of course, the final authority for interpretation or for clarification of matters contained in the Policy is the licensing authority"".

In view of the clarification made from the Office of the Licensing Authority, it is too much for the respondent to contend that he can place a

different interpretation, contrary to the one issued from the Office of the Director General of Technical Development (Import and Export Policy

Cell) . Furthermore, it is seen from Volume 39, Part 4 Excise Law Times, a clarification has been issued by the Chief Controller of Imports and

Exports to solve a problem identical to the present one which reads as follows:

#### CLARIFICATION ON OGL IMPORTS

Items `specifically" mentioned in the open general licence list of the 1988-91 policy will be allowed to import even though they figure in the banned,

restricted by the Chief Controller of imports and exports (CCI & E), following objections from customs. The objections were on the ground that

the Items allowed for import under OGL were also covered by para 21 (F) of the Policy.

Para 21(F) says that any item in appendices 2 (banned), 3 (limited permissible items), 5 (canalised items) or 8 (items restricted for import) with a

specific generic description, will preclude the eligibility to its import under OGL, except where the policy allows this clearly. The CCI & E has told

customs that this para should be interpreted to mean that any item which is specifically allowed under the policy for import under OGL will

`prevail" over the generic entry in the appendices mentioned above. This principle may be kept in mind by customs while clearing goods.

Exporters, however, doubt whether customs will in actual practice accept the interpretation by the CCI & E on the subject. In this connection, a

reference has been made to the customs case decided by the Bombay High Court in 1984. The Court held that import of an item that was

specifically allowed under OGL could not be withheld by the customs on the ground that it was covered by a generic entry in the banned list of the

(import) policy. The case related to import of dry fruit, an item listed on OGL. But the customs objected clearance of this item on the plea that it

was consumer item covered by the banned list. The court overruled this objection, and held that an OGL item could not become a consumer item

simply because it was imported in small consumer packs.

6. In the above back drop, I am of the view that the opinion of Dr. K. Rajagopalan, Professor & Head of the Department of Organic Chemistry,

University of Madras and the chemical examination report of the Customs House Laboratory can not be pressed into service as against the

statutory binding opinion given by the Office of the Director General of Technical Development (Import & Export Policy Cell). It may also be

mentioned that the opinion of the Director General of Technical Development was brought to the notice of the respondent, whereas the petitioner

was not given any opportunity before the respondent obtained the opinion of the professor and the report of the Customs House Laboratory.

7. In view of the foregoing circumstances, I am not impressed by the argument of the learned counsel for the respondent that this writ petition is

liable to be dismissed on the ground that the petitioner has got an effective alternative remedy.

8. Learned counsel for the petitioner made a further request for direction to the respondent to issue a detention certificate for the period during

which the subject goods are under the custody of the respondents to enable the petitioner to get over the demurrage charges from the Port Trust

Learned Counsel for the respondent submitted that the respondent will consider the same on merits and pass orders. It is hoped that the

respondent will exercise the discretion judicially and pass necessary orders on this aspect viz., grant of detention certificate. In the light of the

above discussion, I hold that the import of ASC under OGL is quite in accordance with the provisions of Import and Export Policy for the period

April, 1985 to March, 1988 and the contrary conclusion of the respondent reached under the impugned order is not correct and therefore the

same is quashed.

9. In the result, the writ petition is allowed and the respondents are directed to release the subject goods covered under Bill of Entry No. 023009

dated 28-4-1988/G-M No. 315/88, L. No. 379/88 dated 22-11-1988 without the payment of fine imposed in lieu of the confiscation under the

impugned order. No costs.