(2001) 07 SC CK 0018

In the Supreme Court Of India

Case No : Civil Appeal No''s. 5829, 5833, 5834-35, 6588, 6709 and 7188 of 1999 and 76, 658-59, 892 of 2000

Collector of Central Excise, Bangalore APPELLANT

Vs

Tetragon Chemie (P) Ltd. RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:

Citation : AIR 2002 SC 453 : (2001) AIRSCW 5073 : (2002) 101 DRJ 1 : (2001) 79 ECC 1 : (2002) 139 ELT 3 : (2002) 254 ITR 554 : (2002) 1 JCR 403 : (2001) 10 JT 456 : (2001) 8 SCALE 479 : (2002) 2 SCC 127 : (2002) 126 STC 122 : (2001) 8 Supreme 624

Hon'ble Judges : N. Santosh Hedge, J;K. G. Balakrishnan, J;B. N. Kirpal, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. C.A. No. 5833/99. - The short question that arises for consideration in the present case relates to the products of the respondents which they represent as being animal feed supplements. It is not in dispute that the products of the respondents consist of one or more vitamins mixed together with dilutants and these products are used in a small quantity for improving animals'' performance. The two competing entries are 2302 and 2936.

2.Entry 2302 reads as follows : "For preparation of a kind used in animals feeding, including dogs and cats food" the rate of duty for this is nil.

3.Entry 2936 reads as follows : "The rate of duty prescribed is 15% for the vitamins."

4.The Collector of Central Excise had come to the conclusion that the product did not fall under Entry 2302 because the product had to be added in a small quantity to the main feed to get desired performance of the live stocks or to enhance the performance of the live stocks beyond the normal levels. He further observed that he would have accepted the plea of the assessees that the products were animal feed had the product manufactured by them been directly used as such for animals feeding. The claim of the respondents herein was rejected because according to the Collector the products merely were to enhance the performance of live stocks by addition of these supplements to the animal feeds. From this it is evident that the Collector regarded the products in question as animal feed supplements.

5. On further appeal to the Tribunal it came to the conclusion that animal feed supplements were rightly included in Tariff Item 2302 being preparation of a kind used in animal feeding including dogs and cats food. We agree with the conclusion of the Tribunal that even food supplements like the products of the respondents which are used in animals feeding would fall under the Heading 2302 and, therefore, we do not find any merit in this appeal. While affirming the decision of the Tribunal, this appeal is dismissed with no order as to costs.

6.Remaining appeals : For the reasons stated in the judgment above, all other appeals are also dismissed with no order as to costs.