(1989) 06 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 2929 of 1982

Tata Exports Limited APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 09-06-1989

Acts Referred:

Citation : (1990) 26 ECC 277 : (1989) 25 ECR 93 : (1989) 43 ELT 245

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. This petition concerns the classification of Dextrose Anhydrous. Forty M.Ts. thereof were imported by the petitioners. According to the petitioners, the said goods are an organic compound classifiable under Chapter 29.01/45 of Customs Tariff Act and Customs duty at the rate of 60% is payable thereon. According to the respondents, they are classifiable under Chapter 17.02 as a sugar in solid form liable to duty at the rate of 100%.

2. The petitioners through their advocates wrote to the respondents on 6th December 1982 asking that the said goods be classified under Chapter 29.01/45 as an organic chemical. The said goods arrived in Bombay on 17th December, 1982 and the petitioners through their advocates wrote to the respondents reiterating the said contention. They also requested that no countervailing duty should be charged in respect of the said goods in view of Excise Exemption Notification No. 104/82. On 21st December 1982 this writ petition was filed. On 29th December 1982 the petitioners through their advocates wrote to the respondents asking that Customs duty be levied on the said goods at the rate of 60% and for issuance of detention certificate. They enclosed the material that showed that Dextrose Anhydrous was an organic chemical which was used as a drug intermediate. In this behalf, on 3rd January, 1983, a bill of entry was sent to the Assistant Drug Controller of the respondents for a no objection certificate. He sent samples for examination and a report thereon was made by Italab Pvt. Ltd. which showed that Dextrose Anhydrous fell within the classification of the

Indian Pharmacopoeia, 1966. On 21st January, 1983 the Assistant Drug Control, accordingly, stated that the petitioners should be permitted to mark the said goods with the words "I.P. pharm STD." and the said goods could thereafter be released to the petitioners. This was done on 27th January, 1983. The Assistant Collector of Customs, however, classified the said goods under Chapter 17.02 and levied Customs duty at the rate of 100% thereon as also additional duty. On 9th February 1983 the petition was admitted and an interim order was passed permitting the clearance of the said goods upon the conditions therein set out.

3. Chapter 29 of the Customs Tariff Act applies to, inter alia, separate chemically defined organic compounds, whether or not containing impurities, and provides for a 60% rate of duty. Chapter 17.01 [Note : This should read 17.02] refers to other sugars in solid form, including glucose and lactose, and provides for a rate of duty of 100%.

4. There is a circular by the Jt. Chief Controller of Imports and Exports on 13th October, 1982 in connection with the cash compensatory support scheme for exports. It refers to Dextrose Anhydrous as a drug. A certificate has been issued by Universal Research and Analytical Laboratories on 19th October 1982 which states that Dextrose Anhydrous is an organic chemical which can be and is used as a drug and is included in the Indian Pharmacopoeia, 1966, and the U.S. and British Pharmacopoeias. It also states that Dextrose Anhydrous is a drug intermediate used in the manufacture of Sorbitol. The certificate issued by Italab on 15th January 1983 has already been referred to, as also the action of the respondents'' Assistant Drug Controller.

5. No affidavit in reply has been filed. There is, therefore, no material to counter what has been referred to above.

6. Mr. Bulachandani, learned counsel for the respondents, submitted that the respondents had no opportunity to adjudicate upon the issue. This is not quite correct because after the petition was filed the petitioners, through their advocates, forwarded with their letter dated 29-12-82, the material that showed that Dextrose Anhydrous was an organic chemical used as a drug intermediate. Pursuant to that letter the Asst. Drug Controller was consulted and the Italab report sought. If there had been any material which lent substance to the view taken by the respondents, they would have annexed it to an affidavit in reply to the petition, and it surely cannot be said that they had no time to do so since 6 years have elapsed since the date on which the petition was admitted.

7. Upon the material that is before the court no conclusion is possible but that the Dextrose Anhydrous imported by the petitioners falls within the classification contained in Chapter 29 and that, therefore, it is liable to duty at the rate of 60%.

8. Insofar as additional duty is concerned, the provisions of Section 3 of the Customs Tariff Act apply. The petitioners rely upon a notification under the Central Excise Act dated 28th February, 1982 which exempts, inter alia, drug intermediates altogether from the levy of excise duty. Having regard to the

material aforementioned, there is little doubt that Dextrose Anhydrous is a drug intermediate used in the manufacture of Sorbitol. It would, if manufactured in India, be exempt from the levy of excise duty. Having regard do this court''s judgment in Century Enka Ltd. v. Union of India, 1982 ELT 64, the Dextrose Anhydrous imported by the petitioners is not liable to additional duty.

9. The petitioners are entitled also to the issuance of a detention certificate for the period during which the said goods were detained by the Customs authorities.

10. The petition, therefore, succeeds and is made absolute in terms of prayer (c) (i), (ii) and (iv). The bank guarantee furnished by the petitioners pursuant to the interim order dated 9th February, 1983 shall stand discharged. The respondents shall refund to the petitioners the additional duty paid in the sum of Rs. 58,529/-. There shall be no order as to costs.

11. Upon Mr. Bulchandani''s application the order is stayed for a period of four weeks from today.