Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 2

Customs Appeal No. 10967 of 2021-DB
(Arising out of OIA no. AHM-CUSTM-000-APP-929-930-21-22 Dated-29.09.2021 passed by Commissioner of Customs (Appeals)-Ahmedabad)

M/s Uniworth Enterprises LLP .... Appellant
8th Floor, B Block, Siddivinayak Tower, Behind DCP Office,
Near Adani Vidya Mandir,
Off. S.G. Highway, Makarba, Ahmedabad-380051

VERSUS

C.C. – Ahmedabad ....Respondent
1st Floor, Custom House,
Opps. Old High Court, Navrangpura
Ahmedabad-380051

WITH

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APPEARANCE:
Shri Amal Dave, Advocate appeared for the Appellant
Shri Anand Kumar, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. 11010-11011 /2024

DATE OF HEARING:09.02.2024
DATE OF DECISION:06.05.2024

RAJU

This appeal has been filed by M/s Uniworth Enterprise LLP against change of classification of the product imported by them and demand of duty.

2. Learned counsel for the appellant stated that they had filed bill of entry under self assessment procedure. The dispute relates to classification of 'PVC resin Impact Modifier 'Kane ACE B 22'. The contesting classification are Chapter Tariff Heading 3902 9090 as claimed by the appellant or custom heading 3906 9000 as claimed by the Revenue. The eligibility to full exemption from basic custom duty under notification 46/2011-Cus dated 01.06.2011 depends on the above criteria. The chemical composition of 'PVC resin Impact Modifier 'Kane ACE B 22' is described as under:

	Material – monomers	Content in percentage by weight
1.	Butadiene	47.5-52.5%
2.	Methyl-methylacrylate	15.0-20.0%
3.	Styrene	27.5-32.5%
4.	Acryl Ester	0.1-5.0%

Revenue has relied on the Chapter Note 4 to Chapter 39 which defines the Copolymer as under:

> "4. The expression "copolymers" covers all polymers in which no single monomer unit contributes 95% or more by weight to the total polymer content."

Learned counsel pointed out that the scheme of classification of products under Customs Tariff Heads is based on general Rules of Interpretation. He argued that Chapter notes and sub notes to be complied in the same sequence by adopting the 'exclusion' method of application. He argued that subsequent chapter note/ sub note has to be applied only when the prior one is not applicable. Learned counsel pointed out that note 4 to Chapter 39 of Customs Tariff Act reads as follows:

> "4. The expressions "copolymers" **covers all polymers in which no single monomer unit contributes 95% of more by weight to the total polymer content**.
>
> For the purposes of this Chapter, except where the context otherwise requires, **copolymers** (including co-polycondensates, co-polyaddition products, block copolymers

> <u>and graft copolymers)</u> **<u>and polymer bends are to be classified in the heading covering polymers of that comonomer unit which predominates by weight over every other single comonomer unit</u>**. For the purposes of this Note, constituent comonomer units of polymers falling in the same heading shall be taken together.
>
> If no single comonomer unit pre-dominates, copolymers or polymer blends, as the case may be, are to be classified in the heading which occurs last in numerical order among those which equally merit consideration."

He argued that it is amply clear that Butadiene is a main content by weight in the imported product than any other co-monomer, therefore, the product should be classified under the Custom Tariff Heading under which the Butadiene Polymer is covered. Learned counsel pointed out that Butadiene falls under Chapter heading 3902. Learned counsel further argued that Chapter note 6 of Chapter Tariff Heading 39 reads as follows:

> "Chapter Note 6 of CTH 39 of CTA, 1975 defines the 'Primary Forms' – headings 3901 to 3914, the expression "primary forms" applies only to the following forms:
>
> (a) Liquids and pastes, including dispersions (emulsions and suspension) and solution;
> (b) Blocks of irregular shape, lumps, powders (including moulding powders), granules, flakes and similar bulk forms."

He pointed out that the product Impact Modifier 'Kane ACE B 22' is a co-polymer in primary form, predominated by Butadiene by weight over any other co-monomers. Learned counsel pointed out that Butadiene is organic compound and is in the form of colorless gas that is easily condensed to a liquid. He pointed out that the Butadiene is an important industrial monomer in the production of synthetic rubber. He pointed out that in organic chemistry a diene (diolefin) or (alkaline) has covalent compound that contains two double bonds, usually among carbon atoms. They thus contain alkene units with the standard prefix 'di' of systematic nomenclature. Based on the above facts, learned counsel argued that Butadiene is classified as "Olefin" because 'diene' is equivalent with 'diolefin'. He argued that there is no specific classifications under the product Butadiene, in Chapter heading 3902 and therefore it would fall under the category of others under the same custom tariff heading 3902 under the said heading 3902 9000. Learned counsel pointed out that the appellate authority had wrongly classified the goods under Customs Tariff 3906 9090. Learned counsel argued that appellate authority has wrongly classified the co-polymer as polymer of MMA i.e. (Methyl Methacrylate). Learned counsel pointed out that the appellant had already submitted the composition of co-polymer wherein Butadiene predominates and therefore in terms of Chapter note 4, the goods have to be classified under heading 3902 9000. Learned counsel further pointed out that they are importing the said goods regularly and the same are being classified under Chapter Heading 3902 without any kind of objection from the Revenue. He argued that even after this case, the goods are being imported under the Custom Tariff Heading 3902. He submitted that the following bills of entries:

S.N	Product Name	BOE No.	BOE Date	Ass. Value	Qty KG	Part
1	Kane ACE B-22	7354044	25.03.2020	3124687/-	22000	ICD Khodiyar
2	Kane ACE B-22	8497021	17.08.2020	2708062/-	22000	Hazira
3	Kane ACE B-653H	7354145	25.03.2020	194481/-	13000	ICD Khodiyar
4	Kane ACE B-653H	8497154	17.08.2020	1674075/-	13000	Hazira

Learned counsel further relied on the United States Customs and Border Protection ("Cross Ruling") in the matter of UM300, a product manufactured by Kaneka Malaysia which is a Butadiene predominated MBS modifier used for PVC transparent application. In the said Ruling the goods were classified under HS code 3902.

3. Learned Authorized Representative relies on the impugned order.

4. We have considered rival submissions. The entire case is based on interpretation of sub-heading note which read as under:

Subheading Notes.

1.- Within any one heading of this Chapter, polymers (including copolymers) and chemically modified polymers are to be classified according to the following provisions :

(a) Where there is a subheading named "Other" in the same series :

(1) The designation in a subheading of a polymer by the prefix "poly" (for example, polyethylene and polyamide-6,6) means that the constituent monomer unit or monomer units of the named polymer taken together must contribute 95 % or more by weight of the total polymer content.

(2) The copolymers named in subheadings 3901.30, 3901.40, 3903.20, 3903.30 and 3904.30 are to be classified in those subheadings, provided that the comonomer units of the named copolymers contribute 95 % or more by weight of the total polymer content.

(3) Chemically modified polymers are to be classified in the subheading named "Other", provided that the chemically modified polymers are not more specifically covered by another subheading.

(4) Polymers not meeting (1), (2) or (3) above, are to be classified in the subheading, among the remaining subheadings in the series, covering polymers of that monomer unit which predominates by weight over every other single comonomer unit. For this purpose, constituent monomer units of polymers falling in the same subheading shall be taken together. Only the constituent comonomer units of the polymers in the series of subheadings under consideration are to be compared.

(b) Where there is no subheading named "Other" in the same series :

(1) Polymers are to be classified in the subheading covering polymers of that monomer unit which predominates by weight over every other single comonomer unit. For this purpose, constituent monomer units of polymers falling in the same subheading shall be taken together. Only the constituent comonomer units of the polymers in the series under consideration are to be compared.

(2) Chemically modified polymers are to be classified in the subheading appropriate to the unmodified polymer.

Polymer blends are to be classified in the same subheading as polymers of the same monomer units in the same proportions.

From the above, sub-heading note it is clear that the said notes apply to classification within a heading. The chapter note 4 describes the method of classification of Co-polymer among various headings. Chapter note 4 reads as follows:

4.- The expression "copolymers" covers all polymers in which no single monomer unit contributes 95 % or more by weight to the total polymer content.

For the purposes of this Chapter, except where the context otherwise requires, copolymers (including co-polycondensates, co-polyaddition products, block copolymers and graft copolymers) and polymer blends are to be classified in the heading covering polymers of that comonomer unit which predominates by weight over every other single comonomer unit. For the purposes of this Note, constituent comonomer units of polymers falling in the same heading shall be taken together.

If no single comonomer unit predominates, copolymers or polymer blends, as the case may be, are to be classified in the heading which occurs last in numerical order among those which equally merit consideration.

From the above, it is apparent that for choosing the heading within the chapter, the chapter note 4 is relevant and for choosing sub-heading within heading, has to be done in terms of sub-heading notes. From the composition of material mentioned in para 2 above, it is seen that the Butadiene content is almost 50% whereas Methyl Methylacrylate content is 15-20% only. Thus in terms of Chapter note 4, the goods will fall under the heading relevant to Butadiene which is heading 3902. Once the classification is decided under 3902, the sub heading notes becomes relevant for classification within the heading 3902. In these circumstances, question of change of classification from 3902 to 3906 on the strength of sub-heading note does not arise.

5. In view of above, we do not find any merit in the impugned order, the same is set aside and appeals are allowed.

(Pronounced in the open court on 06.05.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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