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

REGIONAL BENCH-COURT NO. 3

Custom Appeal No. 13083 of 2018 - DB

(Arising out of OIA-AHD-CUSTM-000-APP-127-18-19 dated 16/11/2018 passed by Commissioner of Customs-Ahmedabad)

Super Crop Safe Ltd **........Appellant**
C-1-290, Gidc, Naroda,
Ahmedabad, Gujarat

Versus

C.C.-Ahmedabad **......Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri S. Bissa, Advocate for the Appellant
Shri A R Kanani, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 11106/2024

DATE OF HEARING: 12.12.2023
DATE OF DECISION: 03.06.2024

RAJU

This appeal has been filed by M/s. Super Crop Safe Limited against the change of classification of goods imported by the appellant and consequential imposition of Anti Dumping Duty.

2. Learner Counsel for the appellant pointed out that they had imported Thiram -Tri Methyl Thirum Disulphide or Accelerator TMTD, Thiuram- C. The appellant classify goods under heading 3808 9230. Revenue was of the opinion goods are classifiable under heading 3812 1000. Ld. Counsel pointed out that Revenue has primarily relied on Notification No. 133/2008. He pointed out that the said notification at serial No. 13 reads as follows:-

S. No	Heading	Description	Specification	Country origin	Country of export	Producer	Exporter	Duty Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
13	2902, 2907, 2909, 2917, 2921, 2925, 2930, 2933, 2934, 2935, 2942, 3811, 3812, or 3815	Rubber Chemical TMT	Tetramethylthiuram Disulfude, or Accelerator TMTD, Thiuram C	People's Republic of China	Any	Any other than above	Any other than above	28.86	Per kilogram	Rupees

In terms of aforesaid notification "Tetra Methyl Thiuram Disulfude, or Accelerator TMTD, Thiuram C" attract Anti Dumping Duty at the rate of rupees 28.86 per kg. The custom tariff headings prescribed in column 2 of the said table attach to the notification does not include the heading 3808 where the appellants has sought to classify the goods. Learned Counsel argued that Thiram imported by them is specifically covered under heading 3808 which reads as follows :-

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Prudential areas
3808 3808 92 30	Insecticides, Rodenticides, Fungicides, Herbicides, Anti-Sprouting Products And Plant-Growth Regulators, Disinfectants And Similar Products, Put Up In Forms Or Packings For Retail Sale Or As Preparations Or Articles (For Example, Sulphur-Treated Bands,Wicks And Candles, And Fly-Papers) …………………………………………….. ……………………………………………… ---- Thiram (Tetra Methyl Thiuram Disulphide)	Kg.	10%	
3812 3812 10 00	Prepared Rubber Accelerators; Compound Plasticisers For Rubber Or Plastics, Not Elsewhere Specified Or Included; Anti-Oxidising Preparations And Other Compound Stabilisers For Rubber Or Plastics - Prepared rubber accelerators…	Kg.	10%	

Learned Counsel pointed out to that the item imported by them is specifically covered under heading 3808 9232. He pointed out that the goods imported by them are in the form of packing for retail sale.

2.1. Learned Counsel pointed out that use of the goods is as fungicide and they are sold in retail packing of 25 kgs. He argued that since goods are used for fungicides and are imported in packs of 25 kgs and the goods are classifiable as fungicide and as specifically covered by the heading 3808 9230.

2.2. Learner Counsel strongly contested the observation made in the impugned order to the effect that "undisputed fact in the present case is that imported goods find application as vulcanizing agent as prepared rubber accelerator." Learner Counsel strongly argued that there is no evidence or assertion made by the appellant in this regard. He argued that this observation in the impugned order is without any basis. He argued that the goods imported by the appellant is only fungicide.

2.3. Learner Counsel pointed out that impugned order relies on the fact that entry under sub heading 3808 9230 reads as Thiram (Tetra Methyl Thirum Disulphide) whereas the goods imported by the appellant Thiram (Tri Methyl Thirum Disulphide)

2.4. Learned Counsel further argued that prepared rubber accelerators following under heading 3812 are described as mixtures in the HSN. He argued that the items like insecticides, fungicides, herbicides are described as compounds. He argued that explanatory notes are conclusive and binding in the matters of classification. He argued that since heading 3812 of HSN covers only products which are mixtures and 'Thiram' which is admittedly not a mixture but a compound having chemical formula, was not classifiable under heading 3812 of tariff .

2.5. He further argued that the impugned order is contrary to the fundamental principal that most specific heading should be preferred for the purpose of classification over any general heading. He argued that in the present case sub heading 3808 9230 specifically refers to 'Thiram' (Tetra Mythical Die Supplied) and therefore, the impugned order should be straight away classify the goods under that heading instead general heading like prepared rubber accelerators. He relied on interpretation Rule 3(a) for the purpose of said argument.

2.6. He further argued that in one of the bill of entry the classification is shown as 3812 1000 in the certificate of origin which is clearly typographical error on the part of the supplier. He further pointed out that subsequently the supplier themselves have shown for classification of 3808 9230 for other consignment of similar goods and the same classification is shown in the corresponding country of origin certificates. He further pointed out that the classification mentioned in the certificate is not relevant for the purpose of classification under the Customs Act.

3. Learned AR relied on the impugned order.

4. We have considered rival submissions we finds that undisputed fact that the appellant had imported (Tri Methyl Thiram Di Sulphide) 'Thiram' and sought to classify goods under CTH 3808 9230. The revenue was of the opinion that the item is rightly classifiable under heading 3912 1000 as prepared rubber accelerators. The two sub heading read as follows:-

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Prudential areas
3808 3808 92 30	Insecticides, Rodenticides, Fungicides, Herbicides, Anti-Sprouting Products And Plant-Growth Regulators, Disinfectants And Similar Products, Put Up In Forms Or Packings For Retail Sale Or As Preparations Or Articles (For Example, Sulphur-Treated Bands,Wicks And Candles, And Fly-Papers) ………………………………………….. …………………………………………… ---- Thiram (Tetra Methyl Thiuram Disulphide)	Kg.	10%	
3812 3812 10 00	Prepared Rubber Accelerators; Compound Plasticisers For Rubber Or Plastics, Not Elsewhere Specified Or Included; Anti-Oxidising Preparations And Other Compound Stabilisers For Rubber Or Plastics - Prepared rubber accelerators…	Kg.	10%	

4.1. It is seen that heading 3808 9230 is specifically covers 'Thiram' (Tetra Methyl Thiram Di Sulphide) whereas the heading 3812 1000 is about general heading which covers prepared rubber accelerators. The HSN describes prepared rubber accelerators as follows:-

(A) **Prepared rubber accelerators.**

This category covers products which are added to rubber prior to vulcanisation to give the vulcanised articles better physical properties and reduce the time and temperature required for the vulcanising process. They sometimes also serve as plasticisers. This heading covers **only** such products which are mixtures.

These preparations are generally based on organic products (diphenylguanidine, dithiocarbamates, thiuram sulphides, hexamethylenetetramine, mercaptobenzothiazole, etc.) often combined with inorganic activators (zinc oxide, magnesium oxide, lead oxide, etc.).

It is clear from the above description that the said heading covers only such products which are mixtures in the present case the goods are not in nature of mixture but is a single compound. In view of that the classification of the said product under heading 3812 as prepared rubber accelerators is ruled out.

4.2. It is also seen that the heading 3808 of Custom Tariff Act and the heading 3808 in the HSN is identical. However, the sub heading are described differently in the Custom Tariff heading and the HSN. The HSN does not contain the specific reference to 'Thiram' (Tetra Methyl Thiram Di Sulphide). The allegations in the show cause notice do not provide any specific reasons why the goods are not classifiable under heading 3808. The only reason revenue is seeking classification under heading 3812 1000 is that the certificate of country of origin in the bill of entry No. 786 1159 dated 05.09.2012 describes the goods under CTH 3812 1000. We are of the opinion that merely because certificate of origin mention a certain classification, it cannot be reason to discard the classification sought by the appellant. In the instant case it is clearly settled that for an item to be classifiable under heading 3812 1000 as prepared rubber accelerator, it has to be in the form of mixture. In the instant case there is no dispute that goods imported are not in nature of mixture but single compound. In this circumstances at the rate of revenue to classify the goods under heading 3812 and demand anti dumping duty cannot be sustained.

4.3. Moreover, it is seen that the table under the notification reads as follows :-

S. No	Heading	Description	Specification	Country origin	Country of export	Producer	Exporter	Duty Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
13	2902, 2907, 2909, 2917, 2921, 2925, 2930	Rubber Chemical TMT	Tetramethylthiuram Disulfude, or Accelerator TMTD, Thiuram C	People's Republic of China	Any	Any other than above	Any other than above	28.86	Per kilogram	Rupees

	, 2933, 2934, 2935, 2942, 3811, 3812, or 3815									
14	2902, 2907, 2909, 2917, 2921, 2925, 2930, 2933, 2934, 2935, 2942, 3811, 3812, or 3815	Rubber Chemical TMT	Tetramethylthiuram Disulfude, or Accelerator TMTD, Thiuram C	Any	People's Republic of China	Any other than above	Any other than above	28.86	Per kilogram	Rupees

From the above description it is apparent that the anti dumping duty has been imposed on (Tetra Methyl Thiram Di Sulphide). The show cause notice has been issued in respect of item namely (Tri Methyl Thiram Di Sulphide). Since the description of goods is different in so far as the one contains three methyl molecules (Tri Methyl Thiram Di Sulphide) and other contains four methyl molecules (Tetra Methyl Thiram Di Sulphide), the same are not covered in the notification. Thus, even otherwise the goods imported by the appellant are not covered by the entry 13 and 14 of the Notification 133/ 2008 custom dated 12 December, 2008 imposing anti dumping duty.

5. In this back ground we do not find any merit in the impugned order and the same is set aside and appeal is allowed.

(Pronounced in the open court on 03.06.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Arpita