IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/294,2559-2560/2009 & 1384/2010-EX[DB]

Sl. No.	Appeal No.	Appellant	Respondent	Impugned Order No. date & passed by
1.	E/294/2009	Albert David Ltd.	CCE, Ghaziabad	255-CE/GZB/2008 dated 31.10.2008 Commissioner of Customs and Central Excise (Appeals), Meerut-I
2.	E/2559/2009	Albert David Ltd.	CCE, Ghaziabad	112-CE/GZB/2008 dated 26.05.2009 Commissioner of Customs and Central Excise (Appeals), Meerut-I
3.	E/2560/2009	Albert David Ltd.	CCE, Ghaziabad	113-CE/GZB/2009 dated 26.09.2009 Commissioner of Customs and Central Excise (Appeals), Meerut-I
4.	E/1384/2010	Albert David Ltd.	CCE, Ghaziabad	28-CE/GZB/2010 dated 26.02.2010 Commissioner of Customs and Central Excise (Appeals), Meerut-I

Appearance:

Shri B.L. Narasimhan & Shri Hrishikesh, Advocates for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/07/2018
Date of Pronouncement : / /2018

FINAL ORDER NOs-**72236-72239 / 2018**

Per: Anil G. Shakkarwar

The above stated four appeals are taken up together for disposal since issue involved in all of them is same. The details of the appeals are as follows:-

Appeal No.	**OIA No.**	**SCN date/Period**		**Demand**	**Penalty**
E/2560/2009	113-CE/GZB/2009 dated 26.09.2009	25.06.2007	Oct.03 to Dec. 2005	Rs.68,53,835/-	Rs.68,53,835/-
		11.09.2007	Jan.06 to Dec.06		
E/2559/2009	112-CE/GZB/2008 dated 26.05.2009	25.01.2008	Jan.07 to Jun 2007	Rs.22,88,145/-	Rs.22,88,145/-
E/1384/2010	28-CE/GZB/2010 dated 26.02.2010	23.08.2008	July, 07 to Feb.08	Rs.31,59,608/-	Rs.31,59,608/-
E/294/2009	255-CE/GZB/2008 dated 31.10.2008	09.12.2005	March 05	Rs.32,068/- (Refund)	

2. The brief facts of the case are that the appellants were engaged in the manufacture of product called SIOOXY. It was stated that on the cover of the product it was stated that it contains Omega 3 Fatty Acids + Anti-Oxidants + Fat Soluble vitamins and minerals, a dietary supplement. The dispute arose between the appellants and revenue. The contention of revenue was that the said goods fall under Tariff Item No.3004.50.90 as other medicament contain vitamins or other products of heading 2936, whereas the contention of the appellant was that the said goods are classifiable under Chapter 15 of Schedule to Central Excise Tariff Act, 1985 as

dietary supplements. Through various show cause notices culminating into passing of impugned Order-in-Appeal. It was held that the said goods were classifiable under Chapter 30. Aggrieved by the said orders appellant is before this Tribunal.

3. Heard Shri B.L. Narshimhan with Shri Hrishikesh, learned Advocates on behalf of the appellant and Shri Pawan Kumar Singh, learned A.R. on behalf of the revenue. After hearing both sides, we note that Heading No.30.04 covers medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses, whereas the contention of appellant is that the goods are sold as dietary supplements and not as medicines in the market. Learned Counsel for the appellant has submitted that the license granted by Municipal Corporation of Ghaziabad has notified the products manufactured by them as nutritional supplements and that HSN Explanatory notes to Heading 30.04 excludes dietary supplements from the purview of Heading No.30.04. Further, learned Counsel for appellants has also relied on Final Order passed by this Tribunal in the case of M/s Supreme Enterprises Vs Commissioner of Customs reported at 2015 (316) ELT 274 (Tri.-Mumbai) and argued that the issue before the Tribunal in the said case was classification of Inca Inchi Oil in soft vegetarian Gel Capsules under Tariff Heading No.3004 as P or P medicines or under Tariff Item No. 1515 90 91 as 'Extra Virgin Useable Oil'. The

learned Counsel further submitted that contention of revenue in that case was that the product has prophylactic properties and therefore its merit classifiable under Chapter 30 and that this Tribunal has held that merely because a product possess certain natural properties, it cannot fall under the medicaments.

4. The learned A.R. has supported the impugned orders.

5. Having considered the rival contentions and on perusal of records and on perusal of Final Order passed by this Tribunal in the case of M/s Supreme Enterprises (supra), we find that the findings recorded by this Tribunal are as follows:-

> *"**4.1**It is the Revenue's case that the product merit classification under CTH 3004 as P or P medicaments. Therefore, the onus of proving classification under the said heading lies on the Revenue. The Revenue has not even got the product tested by the Drugs Control authorities to come to the conclusion that the product has therapeutic or prophylactic properties or have been prepared or made so as to have these properties. On the contrary, we find that the product description on the packaging itself, clearly indicates that the product does not have any medicinal use and is not intended to diagnose, treat, cure or prevent any disease. The product has natural ingredients such as, vitamins "A" & "D" and Omega 3, 6 & 9 which has antioxidant properties. There are many products which are naturally occurring which have therapeutic or prophylactic properties. For example products like neem, turmeric, basil leaves, etc., all have medicinal value but nobody considers them medicaments, when they are used as such, without subjecting to any chemical modification. In*

> *fact many of these items are used in daily cooking also. Therefore, merely because a product possess certain natural properties, it cannot be said to fall under the classification of medicaments.*
>
> ***4.2*** *We find that in the Banner Pharmacaps (I) Pvt. Ltd. case, an identical issues arose for consideration before this Tribunal as to whether "Primosa" and "Simrose" oil which are encapsulated would fall in the category of vegetable oil under CTH 1503 or as Dietary Food Supplement under CTH 2108.99. This Tribunal came to the conclusion that these are merely encapsulated and nothing has been added and the product remains vegetable oil meriting classification under CTH 1503. In our view, the ratio of the said decision would apply squarely to the facts of the present case. As regards the Capsulation Services Ltd. case relied upon the Revenue, the issue involved related to a classification of a preparation containing vitamins and pro-vitamins. They were manufactured goods and not naturally occurring substances. Hence the said decision is distinguishable on facts and hence has no application. Accordingly, we agree with the contention of the appellant that the product merits classification under CTH 1515 90. Accordingly, the appeal is allowed and the impugned order is set aside. The stay petition also stands disposed of."*

From the record, we are unable to know whether revenue has got the product got tested by the Drug Control Authorities to come to the conclusion that the product has therapeutic or prophylactic properties and also whether the natural ingredients are encapsulated as such without subjecting to any chemical modification. This fact can be verified by the Original authority. Therefore, we are of the opinion that the said two facts may be verified by the Original authority and on verification of such facts apply the Final order of this Tribunal in the case of M/s Supreme Enterprises (supra) and decide the matter afresh. We, therefore, after setting aside the impugned orders, remand all the four appeals to the Original authority with the aforesaid directions. We make it clear that we have kept all the issues open. Needless to say that Original authority shall provide adequate opportunity of being heard to the appellant.

6. In above terms, all the appeals are allowed by way of remand.

(Pronounced in Court on- / /2018)

(Anil G. Shakkarwar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

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