

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. E/1015/2008-EX[DB]**

(Arising out of Order-in-Appeal No.20/CE/APPL/KNP/2006 dated 19/01/2006 passed by Commissioner (Appeals), Customs & Central Excise, Kanpur)

M/s Industrial Enterprises (Detergent Unit) Appellant

Vs.

Commissioner of Central Excise, Kanpur Respondent

Appearance:

Shri Ashish Kumar Shukla (Advocate) for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 27/11/2018
Date of Decision & Pronouncement : 11/12/2018

FINAL ORDER NO. - **72830/2018**

Per: Archana Wadhwa

After hearing both the sides duly represented by Shri Ashish Kumar Shukla, learned advocate appearing for appellant and Shri Pawan Kumar Singh learned A.R. appearing for the Revenue, we find that the appellant is engaged in the manufacture of various excisable products like Acid Slurry, Spent Acid, Detergent Powder, Detergent Cake and Hair Oil. The dispute in the present appeal relates to the correct classification of the appellant's product "Vitamin E enriched DOT Sheetal Ayurvedic Tel." Whereas the appellants have claimed that

the same is Ayurvedic product classifiable under Sub-Heading 3003.39 as Medicaments, Ayurvedic Hair Oil, Revenue has held that the oil in question would be properly classifiable under Heading No.3305.10 as Perfumed Hair Oil.

2. Before we go to decide the correct classification, we would like to note that the appellant did not file any reply to the show cause notice nor was any personal hearing attended by them before the Original Adjudicating Authority. The classification of the product, either as Ayurvedic Medicament or Perfumed Oil depends upon the various ingredients used in the manufacture of the same as also the process of manufacture. The said dispute has been the subject matter of various decisions of the Tribunal as also various High Courts. The Hon'ble Supreme Court in the case of Commissioner of Central Excise, Allahabad vs. Himtaj Ayurvedic Udyog Kendra 2003 (154) E.L.T. 323 (SC) as also in the case of Commissioner of Central Excise vs. Pandit D.P. Sharma 2003 (154) E.L.T. 324 (SC) has held that oil manufactured by those assesseees correctly falls under Chapter 30, having been manufactured out of ingredients and according to the process mentioned in the Ancient Ayurvedic Text Books.

We note that though the Original Adjudicating Authority has observed that the appellant's product is similar to Himtaj Oil and has applied the Tribunal decision, which was against the assessee and was subsequently reversed by the Hon'ble Supreme Court but still we feel that the various ingredients used in the manufacture of the oil in question as also the process of manufacture is required to be examined. The said examination can be done only at the level of the Original Adjudicating Authority. As such, we are of the view that the matter needs to be remanded to the Original Adjudicating Authority for fresh adjudication. We order accordingly.

3. The appellant would be at liberty to place their defence submission before the Original Adjudicating Authority as also to refer and rely upon various precedent decisions, for which purpose they would be given an opportunity. Appeal is thus allowed by way of remand.

(Pronounced in Court on – 11/12/2018)

Sd/-
(Anil G. Shakkwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks