

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal (s) Involved:

C/21347/20180-DB and C/21365/2018

(Arising out of: Order-in-Appeal No.COC-CUSTOM-000-APP-37/2018-19 dated 13.8.2018 passed by Commissioner of Customs (Appeals), Kochi and Order-in-Original No. COC-CUSTOM-000-COM-22/18-19 dated 24.7.2018 passed by Commissioner of Customs, Kochi

M/s Aasha Biochem
29/314, KPK Building,
Nut Street, Vadakara
Kozhikode – 673104 KERALA

**M/s Aarbee Biomarine Extracts
Pvt Ltd**
IX/405, Karippadom PO
Thalayolaparambu
Kottayam – 686605 KERALA

Appellant(s)

Versus

Commissioner of Customs
Customs House, Willingdon Island
Kochi – 682 009

Respondent(s)

Appearance:

Mr Balagopal M, Advocate
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For the Appellant

**Mr PRV Ramanan
Special Counsel**

For the Respondent

Date of Hearing: 13/11/2018
Date of Decision: 27/12/2018

CORAM:

**HON'BLE MR SS GARG, JUDICIAL MEMBER
HON'BLE MR CJ MATHEW, TECHNICAL MEMBER**

Final Order No: 21933-21934 / 2018

Per: C J MATHEW

Squalane conjures up images of those terrifying denizens of the deep whose lack of swim bladder is compensated by this compound stored in their bodies. The primary critique of Learned Counsel for M/s Aasha Biochem that it is assumptions and premises such as these and far removed from facts that was relied upon by the first appellate authority does give us cause to pause and ponder. Besides pointing to this interpolation of an hitherto unrecorded proposition that the shark hunting so rampant in Somalia as sufficing to establish that squalene, acknowledged to be shipped by a vendor in that country, is of marine origin and thus to be re-classified before being confiscated as prohibited goods attempted to be illicitly imported, he was also at pains to caution us that the imported goods, though described in the import documents as ‘squalane oil 80%’, was not an oil but acyclic hydrocarbon containing impurities that required extraction.

2. Laying out the contours of the dispute before us in the two appeals, arising from separate orders of Commissioner of

Customs (Appeals), Kochi and of Commissioner of Customs, Kochi but, in near identical circumstances, disposed off together in this proceedings, Learned Counsel for appellants informs that the imports against bill of entry no. 5167896/12.02.2018 of 'squalane oil' weighing 10 metric tons valued at ₹45,65,794 and against no. 5486591/07.03.2018 of 14 metric tons valued at ₹70,18,581 were correctly classified under heading no. 29012990 of First Schedule to the Customs Tariff Act, 1975 in the residual sub-heading of 'acyclic hydrocarbon' but was disputed by the proper officers as classifiable under heading no. 15042010 of First Schedule to the Customs Tariff Act, 1975 as 'fish body oil'. Denial of coverage within the 'advanced authorization' issued by Director General of Foreign Trade and confiscation under section 111(d) and 111(m) of Customs Act, 1962 attended by penalties were the proposed detriments. The adjudicating Commissioner confirmed the revised classification in proceedings relating to the latter bill while the appellate Commissioner overruled the dropping of the proceedings by the original authority adjudicating the first bill. Hence these appeals seeking acceptance of eligibility to import against the 'advance authorization' and discharge from the consequences of import of prohibited goods.

3. According to Learned Counsel for appellants, the goods were imported for the extraction of fatty acids before export of the resultant

hydrocarbon which finds use in cosmetic and pharmaceutical industry. He points out that the same declaration had, in the past, been allowed without any hindrance on the part of customs authorities. He claims that the declared classification is appropriate as the impugned goods are nothing but 'squalane' which is a separate chemically defined organic compound and, in terms of notes pertaining to the chapter, precluding coverage in any other heading of the First Schedule to Customs Tariff Act, 1975. Contending that the fulfilment of export obligation after purification, and the description, of the compound is not in dispute, Learned Counsel argues that the test results offered in evidence for revising the classification suffers from bias and misinterpretation which renders the conclusion based on those to be unsustainable. He, with the assistance of learned tomes, also elaborated at length on the accuracy of description of the goods as 'acyclic hydrocarbons.'

4. To relieve the Bench from the tedium of repetition, Learned Counsel for M/s Aarbee Biomarine Extracts Pvt Ltd adopted the arguments of his learned colleague at the bar and went on to question the adoption of test reports, pertaining to other imports, without placing them on notice. He further contends that the imports were effected for processing before exports and the absence of duty implication relegates the entire exercise that of academic. A final plea in relation to both appeals is that the overwhelming predominance of

‘squalane’ in the test samples would place the goods, according to General Interpretative Rules for the Harmonised System of Nomenclature, under the claimed classification and that the extraction of ‘squalane’ from plant source is now quite common in the industry.

5. Learned Special Counsel for Revenue points out that, notwithstanding the several submissions on behalf of the appellants, every importer is, at the threshold, obliged to declare the correct description of the goods as the duty liability and eligibility for clearance are a consequence of this prescription in section 46 of Customs Act, 1962. These, according to him, were patently breached in the two consignments with consequential detriments and, even more so, in the import pertaining to that of M/s Aarbee Biomarine Extracts Pvt Ltd with a chemical description that obfuscated its true content. He also contended that the absence of dispute on the description of the export goods as ‘acyclic hydrocarbon’ could not lend verisimilitude to that claim for the imported goods merely by describing the process to be undergone as ‘beneficiation’ or as ‘refining.’ He also justified the validity of the test report of Central Institute for Fisheries Technology, and the continued correspondence arising therefrom, as the report of Central Revenue Chemical Laboratory had posited that the imported goods could be of marine origin.

6. Goods of marine origin under heading 1504 of First Schedule to

the Customs Tariff Act, 1975 are banned for import; doubtlessly because of threat of endangering the species to satisfy human vanity and greed. In the context of this prohibition, the geographical origin, or the ultimate destination, of the goods is not relevant; irrespective of the source and consumption, the taint of inhumanity, and so promulgated by law, should not be allowed stain the public record of the country. Neither can the precedence of the past justify the continuance of a statutorily criminalized deed.

7. Arguably, the appellants have claimed a classification that is untouched by the statutory taint that attends the proposed alternative and, unarguably, the onus of disproving the right to that claim rests with the customs authorities. Though, as conceded by Learned Special Counsel for Revenue, there is no dispute over the applicability of the claimed heading to the goods emerging for export, we must, while also concurring with him that the test results do not rule out the possibility contended by customs authorities, confirm that the testing procedure is validated with no compromise of rigour. Only thus can the detrimental consequences that follow be beyond dispute by the appellants.

8. It cannot but be noticed that the classification claimed by the appellants under the heading of 'unsaturated acyclic hydrocarbon other than ethylene, propylene, butylene, butadiene, acetylene or

heptene', is of too broad a spectrum to gain approval without reference to the General Interpretative Rules. It appears to have stemmed from the chapter title, molecular composition and the principle of dominating constituent. It is clear from rule 1 of General Interpretative Rules, which discards titles as irrelevant to classification, that every organic chemical need not necessarily find placement in the said chapter unless in conformity with the appropriate heading and sub-heading. As the specific descriptions within the heading 'acyclic hydrocarbon', admittedly, do not find direct fitment for the imported goods, the dominance principle is resorted to by Learned Counsel for appellants. The dominance principle in rule of General Interpretative Rules applies appropriately to classification of mixtures and, in the light of assertion of Learned Counsel that the content, other than 'squalene', in the imported goods are impurities, the claim for application thereof is self-defeating. Even if the claim of the composition is to be considered on its own, the scheme of the First Schedule will have to be examined.

9. Other than with reference to specified headings or descriptions in note 1(e), which need not necessarily be chemically defined, and goods specifically excluded, the headings in chapter 29 of First Schedule to Customs Tariff Act, 1975 are intended for 'separately defined organic compounds', whether or not containing impurities. Correspondingly, there are *contra* exclusions of 'separately defined

organic compounds' in other chapters implying that conflict of choice between a specific heading in another chapter and in this chapter, the goods are, inevitably, to be classified in chapter 29. On the other hand, notes in chapter 15 of First Schedule to Customs Tariff Act, 1975, which Revenue considers to be more apt, is devoid of such a restrictive condition. Hence, a conflict between a specific heading in chapter 15 and chapter 29 would be resolved by classifying under the more specific heading of the two. Therein lies the dilemma for the claim of the appellant for coverage is under a residual entry that is handicapped thus

'36. We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.

37. It is good fiscal policy not to put people in doubt and quandary about their liability to duty, it would have been better if the article is eo nomine, put under a proper classification to avoid controversy over the residuary clause. When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and

consign it to an orphanage of the residuary clause. The question of competition between two rival classifications will, however, stand on a different footing.'

as held by the Hon'ble Supreme Court in *Dunlop India Ltd & Madras Rubber Factory Ltd v. Union of India & others* [1983 (13) ELT 1566 SC]. Validation of the alternative classification urged by Revenue will, therefore, discredit that claimed by appellant.

10. The samples of imported products were subject to testing at different laboratories. There is no clear cut finding of presence of 'oil of marine origin' though, at the same time, not entirely ruled out. The dominance of 'squalane' is beyond question but its source may yet taint the import. It is contended by Learned Counsel that the test effected by Central Institute of Fisheries Technology was stretched, with much labour demonstrated in subsequent inquiry for clarification, to preclude an absolute finding of 'plant' as a source and merits discrediting as evidence of the source being 'marine.' This plea appears reasonable as, admittedly, both Central Institute for Fisheries Technology and Interfield Laboratories lacked the wherewithal to identify the source which cross-examination of the author of the report would have elicited. However, the corresponding claim of 'plant' life as the source of imported 'squalane' is not supported by any laboratory analysis. It is also admitted by Learned Counsel that the concentration of 'squalane' in compounds generated from 'plant'

source would not explain the concentration reported in the imported goods and he was unable to convince us of his claim that beneficiation from combining 'squalane oil' from various sources would adequately do so. In our understanding, beneficiation is a consequence of blending of compounds containing higher concentration with those of lower concentration. With the maximum concentration of 'squalane' in compounds, irrespective of origin, being, admittedly, less than the concentration in the imported goods, that doubt remains unanswered. Learned Counsel has, therefore, not been able to sustain their contention that the goods are not of marine origin.

11. But for the special circumstances of the present facts, the failure on the part of Revenue to conclusively establish coverage under the heading proposed by them would have sufficed to allow the claim of importer even if that not be on especially firm ground. The special circumstances are that the samples and/or the imported goods are available, that the goods are yet to be cleared for home consumption or that normal period of limitation has not elapsed since and that, most important of all, it behoves the administration of India, as a responsible constituent of the polity of nations comprising of responsible humanity, not to be a willing accessory in the reprehensible slaughter of endangered species. Hence, it is necessary to make good the inadequacy of analysis in the earlier test reports and thus eliminate the possibility of any taint in the imported goods.

12. To enable that remedy, we set aside the impugned order and remand the matter back to the assessing authority for having an appropriate test undertaken at such institution that has expertise in oceanography. Furthermore, the importer is also at liberty to obtain and furnish clarification from the licencing authorities of the eligibility to import 'squalane oil', even of marine origin, within the 'advance authorization' issued to them.

13. Appeals are, accordingly, disposed off.

(Order was pronounced in Open Court on 27/12/2018.)

(S S GARG)
JUDICIAL MEMBER

(C J MATHEW)
TECHNICAL MEMBER

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