IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/14 to 16/2008

(Arising out of Order-in-Appeal No.89/91/2007 (M-IV) dated 28.09.2007 passed by the Commissioner of Central Excise (Appeals), Chennai).

1. M/s. Motherland Laboratories : Appellants
2. Shri Samsen Papli
3. Shri S. Abdul Majeeth

Vs.

CCE, Chennai-I & IV : Respondent

Appearance

Shri S. Murugappan
For the appellant

Shri B. Balamurugan, AC (AR)
For the respondent

CORAM

Hon'ble Shri D.N.PANDA, Judicial Member
Hon'ble Shri MADHU MOHAN DAMODHAR, Technical Member

Date of Hearing/Decision: **07.03.2017**

FINAL ORDER No. 40437 – 40439/2017

Per: D.N.Panda,

In the second round of litigation before Tribunal, the contention of the appellant today is that when it cleared "FRANCH OIL $_{NH}$" repacking that, whether amount to manufacture and whether such goods is covered by the Tariff entry 30.03 or shall be classifiable under Tariff heading 15.02. Ld. Adjudicating authority has recorded in para 12.1 of his order what was the nature and character of the goods and how that was manufactured under the Drug Licence. It would be productive to reproduce the same for convenience of reading as under:-

> "12.1 M/s. ML is engaged in the manufacture of Cold Pressed Castor Oil at Erode and market the same in 100 ml retail packs as "FRANCH OIL NH" and they undertake the job of converting the said Cold Pressed Castor Oil and make them marketable as a medicament confirming to the Indian Phanmocobian Standard. A label viz. "FRANCH OIL NH" is pasted which also contain repacker's and marketing unit name, then the bottle is placed inside a printed carton showing "FRANCH OIL NH" along with the phrase showing RICINUS CUMMINUS OLEUM I.P. The product is being marketed as a product for "Dermal care" and for other application on the skin for healing etc. They also possess a Drug licenced from the competent authority for the above said activity. Shri Muthukumar, Production Chemist of M/s. ML in his statement dated 7.5.1999 has stated that the process of re-packing of C.P.Castor Oil was licensed under Form 25 of Drug Control Act, and that the oil has medicinal and therapeutic properties; that the product was not a food product or beverage and it could be used as a general application on human skin; that the Franch Oil was different from the Castor Oil being sold in the market since "FRANCH OIL NH" was made out of Cold Pressed Castor Oil confirming to I.P Standard whereas the Castor Oil available in the market was hot pressed."

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2. Appellant says that primarily the goods manufactured are nothing but the vegetable oil falling under the tariff heading 1502.00. The said heading reads as under:-

> "Fixed vegetable oils, the following namely, cotton seed oil, neem seed oil, karanj oil, sik cotton oil, rice bran oil, khakhan oil, palm oil, water melon oil, sal oil, mahua oil, kusum oil, rubber seed oil, mango kernel oil, kokum oil, dhupa oil, undi oil, maroti oil, pisa oil and nahor oil, and their fractions"

According to the appellant even though the goods was manufactured under the Drug licence, that cannot be meant to be a "Drug" since appellant was only a packer and it was packing such goods as Caster oil for clearance. The brand name "FRANCH OIL $_{NH}$" appearing on the wrapper covering the container of the goods in which the goods was packed, has no significance to the present case for adopting classification sought by Revenue. Appellant being a manufacturer of various drugs and was also manufacturer of impugned goods under the supervision of the drug regulations and manufacturing process monitored, that shall not bring the branded goods to be called as proprietary medicine. Accordingly, character of the goods being castor oil that shall fall under the tariff entry 1502.00.

2. Revenue on the other hand says when the appellant was manufacturing the impugned goods recognized by the Drugs and Cosmetics Act and under IP Cold Press, as well as has the trade name "FRANCH OIL $_{NH}$", it should be classifiable under the tariff heading 30.03. Repelling such contention of Revenue, appellant says that the goods will not come under Chapter 30 since that is

Customs, Excise & Service Tax Appellate Tribunal neither a medicament nor a proprietary medicine. Merely because it is manufactured under the process of supervision of Drugs licence regulation that shall not convert the impugned goods into medicament to bring that into the purview of Tariff heading 30.03.

3. Heard both sides and perused the records.

4. The essential features of the goods is that it is known by a trade name "FRANCH OIL $_{NH}$". Revenue has also gathered a report from the University of Madras as to the character of impugned goods with trade name "FRANCH OIL $_{NH}$". That exhibits that the goods is basically a drug providing relief and remedy for wound healing used as antifungal-antibacterial, analgesic and has also anti-inflammatory properties. The goods has trade name ie. "FRANCH OIL $_{NH}$" having the character of proprietary medicine. When we looked into various literatures placed before us, it is made clear that the goods are used for treatment of diseases and remedial in its character. It is also apparent from the record that the Open International University has described the goods as Complementary Medicines. Similarly, the labels recovered by the Revenue exhibits that the goods were marketed under trade name exhibiting the character of the goods and distinguishes it from mere vegetable oil as contended by appellant. It is proprietary medicine and has also character of medicament providing remedy to various diseases and symptoms.

5. Having noticed the character of the goods which is drug in nature and also for the features aforesaid, including the trade

name it bears that squarely falls under the Chapter 30.03 as classified by Revenue. Accordingly all three appeals are dismissed.

(Dictated and pronounced in open Court)

10/03/17

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

10/3/2017

(D.N. PANDA)
JUDICIAL MEMBER

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