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

Appeal No.C/368/2009

[Arising out of Order-in-Appeal No.564/2009 dt. 29.06.2009 passed by the Commissioner of Customs (Appeals), Chennai]

Pegassus Alloys Pvt. Ltd. — Appellant

Versus

Commissioner of Customs, Seaport
Chennai — Respondent

Appearance:

Shri M. Karthikeyan, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 09.10.2017

FINAL ORDER No. 42357/2017

Per Bench

The facts of the case, in brief, are that M/s.Pegassus Alloys Pvt. Ltd., the appellants herein, had imported 18000 kgs. of Yeast Cell Well vide Bill of Entry dt. 07.06.2007 classifying the goods under CTH

21021090 thereby claiming NIL CVD in terms of Notification No.3/2006-Cus. Sl.No.23. Original authority vide an order dt. 01.08.2007 held that as the goods Yeast Cell Wall is not affected in the process of Autolysation, the goods do not merit classification as "Autolysed Yeast" under CTH 2106 and hence upheld the declared classification under CTH 2102 and eligible for benefit of Notification No.3/2006-Cus. In Appeal, Commissioner (Appeals) vide the impugned order dt. 29.06.2009 set aside the adjudication order and held that the impugned goods are correctly classifiable under CTH 2106 and not eligible for exemption under Notification No.3/2006. Hence appellants have filed this appeal before this forum.

2. On 09.10.2017, when the matter came up for hearing, on behalf of appellant Ld. Advocate Shri M. Karthikeyan made oral submissions which can be broadly summarized as under :

(i) 'Autolysation' is a process, which happens by itself, that is, the process of self-digestion of the proteins and other constituents by the enzymes contained in the yeast cells. In other words, the process of inner constituents of an yeast cell getting digested on its own is known as the process of autolysis and the yeast cell wall, which is nearly 1/3rd by dry weight part of the cell, is not affected. Thereafter, the yeast cell wall which does not undergo the process of autolysis is separated by centrifugation and spray drying method. As such, the yeast cell wall thus recovered can never be called as product of autolysis as the same does not undergo the process of self digestion. It is a fact that the yeast within the yeast cell wall undergoes the process of self digestion which is otherwise called as Autolysis. However, the yeast cell wall does not undergo such process of self digestion and it cannot be called as "Autolysed Yeast".

(ii) In terms of the HSN, the heading 2106 covers three genre of products namely, 'Autolysed yeast', 'other yeast extract' and 'products of hydrolysis of yeast'. It is pertinent to mention here that apart from autolysed yeast, 'other products of hydrolysis' alone has been included under this heading and not 'other products of autolysis'.

(iii) The grounds of appeal filed by department before Commissioner (Appeals) does not claim the impugned product to be a product of hydrolysis, which stands covered under the heading 2106 as per HSN. As such, except for autolysed yeast per se, any other product of the autolysis is not covered under the heading 2106 even as per the HSN. Hence, the impugned order of the Commissioner is not sustainable.

(iv) When the admitted position remains that the yeast cell wall is not a preparation to be classified under heading 2106, it is not known as to how the Commissioner (Appeals) have held the same is classifiable under 2106.

(v) The lower adjudicating authority has taken into consideration the Chinese export customs declaration to the effect that such yeast cell wall is classifiable under 2102. Similarly, the excise invoice of local manufacturer of yeast cell wall, namely M/s.Burns Philip (I) Pvt. Ltd., Chennai (now M/s.AB Mauri India Pvt. Ltd.) was also considered by the lower adjudicating authority while upholding the classification under heading 2102 as claimed by the appellant. These were not in dispute in the impugned departmental appeal before the Commissioner (Appeals)

3. On the other hand, on behalf of department, Ld. A.R Shri K. Veerabhadra Reddy supports the impugned order. He submits that the product being an extract is not covered by CTH 2102; that HSN Explanatory Notes to Heading 2102 excludes 'Autolysed Yeast' which is required to be classifiable under CTH 2106.

4. Heard both sides and have gone through the facts.

5.1 From the facts on record, it emerges that the entire controversy concerns whether the product declared as "Yeast Cell Wall" is in the nature of Autolysed Yeast which would merit classification as

"Aytolysed Yeast" under CTH 2106 or whether the classification under CTH 2102 declared by the appellant is more appropriate.

5.2 Perusal of HSN to Chapter 2102 indicates that yeasts classifiable under that heading may be in the active or inactive state. As per HSN, active yeasts generally provoke fermentation; that they consist essentially of certain micro-organisms which multiply during alcoholic fermentation; that yeasts may also be produced by partial or total prevention of fermentation, according to the aeration process. On the other hand, inactive yeasts, obtained by drying, are generally brewery, distillery or bakers' yeasts which have become insufficiently active for further use in those industries; that they are used for human consumption or for feeding animals; the other types of dried yeasts commonly known as petroproteins or yeast bioproteins are also covered under CTH 2102.

5.3 The dispute has arisen because of the HSN notes to CTH 2106 indicating that Autolysed Yeast and other yeast extracts, products obtained by the hydrolysis of yeast, which cannot provoke fermentation and they have a high protein value, used mainly in the food industry, will find classification under that heading. What is therefore required to be analysed is whether the impugned goods have emerged after process of autolysation.

5.4 Appellants had submitted literature relating to the imported product before the lower adjudicating authority. The said literature clarifies that Yeast Cell Wall is a structural component which gives yeast its shape and rigidity and forms part of the cell's outer covering and occupies 26 to 32% of the cell dry weight; that Autolysation is a process, which happens by itself, i.e. self-digestion of the proteins and other constituents by the enzymes contained in the yeast cells; that only the inner constituents get self-digested which is termed as autolysation while the yeast cell wall which is nearly 1/3rd by dry weight part of the cell is not affected; that this part of the cell is separated by centrifugal and then by spray drying method; that even without the process of autolysation the yeast cell wall can be obtained after the yeast extraction method. Based on the data provided by the importer/appellant, the lower adjudicating authority concluded that the separated autolysed portion of yeast is classifiable under CTH 2106, however, since **Yeast Cell Wall** itself is not autolysed and has not undergone any change, it will not fall under CTH 2106 but under 2102.

5.5 After careful analysis of the facts on record, we find ourselves in agreement with these findings of the lower adjudicating authority, especially since no contradictory evidence has been adduced by the department to show that the Yeast Cell Wall is autolysed and undergone change in any such autolysation.

5.6 It is interesting to note that even pursuant to review of the aforesaid order dt. 01.08.2007, in the grounds of appeal, filed by department before Commissioner (Appeals), in para-3 thereat states that "*Yeast Cell Wall obtained by means of breaking Yeast Cell and isolated by the way of centrifugation.......*". However, the department has not elaborated as to why the said yeast cell wall will then be required to be considered as a 'preparation' classifiable under 2106 and not under CTH 2102.

5.7 We also note that even the Commissioner (Appeals) in page-6 of the impugned order has referred to the definition of "Autolysis" in Stedman's Concise Medical Dictionary wherein the process has been defined as under:

> "*1. Enzymatic digestion of cell (specially dead or degenerate) by enzymes present within them (autogenous). 2. Destruction of cells as a result of lysine formed in those cells or others in the same organism. Syn. Autocytolysis, autodigestion, isophagy [auto + G.lysis, dissolution]*"

However lower appellate authority has not analysed whether the "Yeast Cell Wall" has also been produced by such process of autolysis.

5.8 The lower appellate authority has also noted that during the process of autolysis, the cells get destructed and the outer covering would also not remain integrated. Having made such an observation, we are not able to fathom how lower appellate authority finds that the impugned goods are autolysed yeast, in spite of his confusion "*notwithstanding the fact whether the yeast cell wall undergoes any change or not......*". Once it is evident that in the process of autolysation merely results in enzymatic digestion of the cell by enzymes and their destruction, the resultant degenerated cell per se would possibly merit classification as 'Autolysed Yeast' under CTH 2106. However, when the Yeast Cell Wall on its own does not get autolysed or undergoes any change, the same would only be classifiable as yeast under CTH 2102.

6. In the event, we set aside the impugned order, which will have the effect of restoring the adjudication order dt. 01.08.2007 of the

original authority. Appeal is allowed with consequential benefits, if any, as per law.

(operative part of the order dictated in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Customs Excise & Service Tax Appellate Tribunal

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अपील अधिकरण / (CESTAT)
चेन्नै / CHENNAI