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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/360 , 371-372/2007 - CU[DB] Date **27/06/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S PACIFIC LEATHER PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/266-268/ 2011 CU[DB]** dated 21.06.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S PACIFIC LEATHER PVT. LTD.
197/189, RAMRAI SARAI, JAJMAU,
KANPUR

2. Adv. / Consult

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. **M/S SUNRISE OVERSEAS**
150 FT. ROAD, JAJMAU, KANPUR
15. M/S SUPER TANNERY LTD.
187/170, JAJMAU ROAD, KANPUR-208 010.

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH

Customs Appeal No.C/360/2007
Customs Appeal No.C/371/2007
Customs Appeal No.C/372/2007

(Arising out of Order-in-Appeal No.146-147/CUS/APPL/KNP/07 dt. 23.3.07 and No.145/CUS/APPL/KNP/07 dated 29.3.07 and No.121-122/CUS/APPL/KNP/07 dt. 23.3.07 passed by the CCE(A), Kanpur)

For approval and signature:
Hon'ble Mr.M.V.Ravindran, Member (Judicial)
Hon'ble Mr.M.Veeraiyan Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Kanpur — Appellant

Vs.

M/s.Pacific Leather (P) Ltd. — Respondent
M/s.Sunrise Overseas
M/s.Super Tannery Ltd.

Present for the Appellant: Shri Sonal Bajaj, SDR
Present for the Respondent: None

Coram:Hon'ble Mr.M.V.Ravindran, Member (Judicial)
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing: 21.06.2011
Date of Decision: 21.06.2011

Final **ORDER NO.** C/266-268/11

PER: M.VEERAIYAN

These three Appeals by the department involve common issues and therefore are being dealt with by this common order.

2. Heard learned SDR. None appears for the respondents inspite of notice.

3. The relevant facts in brief are that the respondents imported goods claiming to be Sulphonated Fish Oil seeking classification under chapter sub heading 34029020. The imported products were in fact declared in the bills of entry as follows:

"Sulphonated Fish Oil OPTIMALIN UPNC" (in the case in appeal No.C/371/07)

"Sulphonated Fish Oil ADUVAX LB & OPTIMALIN UPNC" (in the case in appeal No.C/360/07)

"Sulphonated Fish Oil SULCODOL CI". (in the case in appeal No.C/372/07)

4. The department allowed provisional clearance of the goods after drawing samples which were sent to Central Revenue Control Laboratory (CRCL) for testing. As per test reports, "the sample was a preparation having Sulphonated Fish Oil and additives." On the basis of test reports, the show cause notices were issued proposing classification of the imported products under chapter sub heading 34039100 as "preparation of a kind used for oil or grease treatment of textile material, leather for skins or other materials". The respondents contested the show cause notices and produced test reports obtained from Central Leather Research Institute (CLRI), according to which surface active function is subsidiary to the main function of fat-liquoring. The original authority confirmed classification as proposed in the show cause notices and finalized assessment of bills of entry and demanded differential duty. On appeal to the Commissioner (Appeals), the Commissioner (Appeals) has set aside the orders of the

original authority. Hence, the department is in appeal before the Tribunal.

5. Learned SDR submits that the test reports of the CLRI clearly mentioned the product as 'preparation having Sulphonated Fish Oil and additives" and therefore they cannot be treated as "Sulphonated Fish Oil". Therefore the classification claimed by the respondents is not acceptable. He also relied on technical literature produced by the respondents in respect of ADUVAX LB wherein it is opined that the product is "fat liquor agent" giving the most softness which was being used specially in leather etc. Drawing our attention to this description which reads as "oil based on Sulphonated Fish Oil', he submits that these products should not be treated as "Sulphonated Fish Oil" and considering the use of these items for the purpose of fat liquoring, they should be treated as falling under chapter sub heading 34039100. In this regards, he relied on the decision of the Tribunal in the case of M/s.Associated Finishing Agency vs. CC, Chennai reported in 2011-TIOL-62-CESTAT-MAD and the decison in the case of Prema Colors & Chemicals vs. CC, Chennai reported in 2008 (231) ELT 96.

6. We have carefully considered the submissions and perused the records. At the outset, we note that the burden to prove classification of the imported products is on the department. We are dealing with classification of items claimed as "Sulphonated Fish Oil", a chemical. The chemical examiner's report relied upon by the department referred to the imported materials as "the sample was a preparation having Sulphonated Fish Oil and additives." The additives have not been identified. Whether the presence of additives will make the product

different from "Sulphonated Fish Oil" depends upon the nature and the quantity of additives. This fact is not available in the chemical examiner's report relied upon by the department. The end use of the imported product, whether the same is used for fat liquoring or other purpose, will be relevant only if the said product goes outside the description of "Sulphonated Fish Oil". There is no expert opinion relied upon as to the different uses of the "Sulphonated Fish Oil". The technical opinion relied upon in respect of ADUVAX LB describe the nature of the product as "oil based on Sulphonated Fish Oil". At the same time, there is clear opinion "ADUVAX LB" is a "strong Sulphonated Fish Oil". This in fact supports the view of the respondents rather than the claim of the Revenue. Therefore, in our considered opinion the imported products deserved to be considered as Sulphonated Fish Oil and the term Sulphonated Fish Oil being specifically mentioned under chapter sub heading 34029020, the same deserve to be given preference over the other tariff item 34039100 as rightly concluded by the Commissioner (Appeals) relying on Rule 3(a) of Rules of Interpretation of Customs Tariff, 1975 which envisage giving preference to most specific description.

7. The decision of the Tribunal in the case of M/s.Associated Finishing Agency is on a clear finding that the goods imported by the appellants in that case was found on test by the Customs Lab to be "fat liquor" and not "Sulphonated Fish Oil". Similarly, the decision of the Tribunal in the case of Prema Colors & Chemicals is on the appreciation of fact that the sample of the product in the said case did not shown the presence of "Sulphonated Fish Oil". These two cases

therefore, are clearly distinguishable from the facts of the present case.

8. In view of the above, we do not find any reason to interfere with the decision of the Commissioner (Appeals) which are based on appreciation of test reports of CRCL and application of Rule 3(a) of Rules of Interpretation of Customs Tariff, 1975.

9. The appeals are therefore rejected.

(pronounced in the open court)

(M.V.RAVINDRAN)
MEMBER (JUDICIAL)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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