CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO.1

Appeal No. E/2456/2007 Ex.(DB)

(Arising out of Order-In-Appeal No.107-CE/MRI-1/2007 dated 28.05.2007 passed by CCE,Meerut)

Anu Products Ltd. ….. Appellants

V/s

C.C.E. Meerut …… Respondent

DATE OF HEARING:27.03.2017
DATE OF DECISION:20.04.2017

Appearance

Shri N.K. Sharma, Advocate for the Appellant
Shri G.R. Singh, DR for the Respondent

CORAM: HON'BLE MR. JUSTICE (DR) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K ARYA, MEMBER(TECHNICAL)

FINAL ORDER NO.52950/2017

Per Ashok K Arya:

The Appellant M/s Anu Products Ltd. is in appeal against Order-in-Appeal No.107-CE/2007 dated 28.05.2007 passed by the Commissioner Appeals, Meerut whereunder the goods manufactured by the Appellant namely Dermitol C-024 are held to be classified under Heading No.3801.10 of Central Excise Tariff, and which are not covered under Exemption Notification 50/2003-C.E. dated 10.06.2003.

2. The brief facts are as under:

i) The Appellants are engaged in manufacture of organic bio-fertilizers falling under Heding 3808.90 and agricultural spray oil i.e. Dermitol-C024.

ii) The item namely Dermitol C-024 is used to control plant insects, fungus and virus diseases in fruits, nuts etc.

iii) The Revenue says that brochure of Dermitol C-024 submitted by the assessee Appellants mentions that the item controls plant insects, fungus and virus diseases in fruits, nuts, vegetable, field crops, shrubs, green houses and ornamental flowers and acts as an insecticide, fungicide and pesticide which is used in integrated pest management programme.

iv) The Revenue claims that item Dermitol C024 is classifiable under Central Excise Tariff Heading 3801.10 and not under TH 3808.20 as claimed by the Appellant assesse.

v) The Revenue claims that Insecticides, fungicides, herbicides, weedicides & pesticides (basic manufacture and formulation) are classifiable under Central Excise Tariff chapter sub heading 3808.10 and are mentioned at Sl.No.15 in the Annx.I. to Notification No.50/2003, which is under negative list and on which benefit of Notification 50/2003 is not available. Revenue states that initially the assessee Appellant classified Dermitol-C024 under Central Excise Tariff chapter sub heading 2710.95 but later changed the classification to Sub Heading 3808.90/3808.20 of Central Excise Tariff to evade payment of Central Excise duty.

vi) Revenue issued Show Cause Notice demanding Central Excise duty for subject goods (Dermitol C-024) under chapter sub heading 3808.10 of Central Excise Tariff which is mentioned at Sl No.15 in the Annx.I to Notifification 50/2003 Central Excise (supra) which is under negative list and exemption of duty under this notification is not available to said goods.

vii) The Show Cause Notice was adjudicated by the Assistant Commissioner vide Order-in-Original No.25/06(Adj 33/06) dated 28.07.2006 confirming the payment of Central Excise duty of Rs.1,22,697/- alongwith interest and equivalent penalty. In appeal the assessee's demand was reduced to Rs.1,05,482.28 and penalty was also waived. Thereafter the assessee is in appeal before the Tribunal.

3. With above background, we have heard both sides represented by ld Counsels Shri N.K. Sharma for the Appellant and Shri G.R. Singh for the Revenue.

4. The main issue here is classification of product Dermitol-C024 and whether the goods are entitled to benefit of Notification No.50/2003-CE dated 10.06.2003.

5. The assessee Appellant is claiming classification of the goods under chapter sub heading 3808.20 or 3808.90 alongwith the benefit of Notification No.50/2003-CE dated 10.06.2003 (supra). If the goods are classified under chapter sub-heading 3808.10 then benefit of Notification No.50 2003 (supra) is not available.

5.1 The description of the Chapter Heading 3808 of Central Excise Tariff including sub-headings 3808.10, 3808.20 & 3808.90 are given as under:

| | |
|---|---|
| 38.08 | Insecticides, rodenticides, fungicides, herbicides<br>Anti-sprouting products and plant growth regulators,<br>Disinfectants and similar products, put up in forms or<br>Packings for retail sale or as preparations or articles<br>(for example, sulphur-treated bands, wicks and candles,<br>and fly-papers) |

| | | |
|---|---|---|
| 3808.10 | -Insecticides, fungicides, herbicides, weedicides and Pesticides | 16% |
| 3808.20 | -Plant growth regulators | 16% |
| 3808.90 | -Other | 16% |

The above description in the subject heading indicated that the item is covered by the description of sub-Heading 3808.10, which covers insecticides, fungicides, habicides, weedicides and pesticides. The assessee Appellant is claiming that item is not covered by sub-heading 3808.10 but is covered by either 3808.20 or 3808.90, which covers plant growth regulators (3808.20) or other's (3808.90). The question is-if the item is covered by 3808.10 then, it is either insecticide, fungicide, herbicide, weedicide or pesticide. If it is not so, either it is covered by 3808.20 as plant growth regulator or it would be under 3808.90 as 'other'.

5.2 The assessee says that the subject item-Dermitol C-024 is not mentioned in the Schedule of the Insecticides Act, 1968. The said Schedule gives a list of insecticides. However, just by referring to the list of insecticides given in the Schedule to the Insecticides Act 1968, one cannot resolve the issue. One has to go beyond the Schedule of Insecticides Act, 1968. One has to find out what does 'insecticide mean'. Oxford Advanced Learner's Dictionary gives the meaning of insecticide as a chemical used for killing insects. Wikipedia Free Encyclopedia available on the internet says that it is a substance used to kill insects, which are used in agriculture, medicine, industry and by consumers. Wikipedia further says that all insecticides have the potential to significantly alter eco system; many are toxic to humans, some concentrate along the food chain.

5.3 The definition given in Section 3(e) of the Insecticides Act 1968 also mentions/includes such other substances (including fungicides and weedicides) as the Central Govt. may include in the Schedule from time to time. This definition further says that any preparation containing any one or more such substances will also be known as 'Insecticides'.

5.4 The literature/brochure of the product Dermitol C024 available on record also mentions that :

> Dermitol-C024 is highly effective: It clogs the insect's oxygen intake System, interfering with normal respiration, thus works as suffocating and **killing them in few seconds**. It creates a film acting as a physical barrier between the plants & pests which prevents feeding and egg laying of the pest insect. It works at the physical level & not at the bio-chemical level meaning there is practically no chance for past to develop resistance to Dermitol.
>
> Dermitol C-024 is very economical. I**t kills the pests** and also protects the Plant for several days, thus avoids respective spraying. This drastically Reduces spraying cost for the farmers.

From the above part of literature/brochure given by the assessee Appellant, it is clear that the item is meant for killing the insecticides/pests. A mere non-mention of the item in the Schedule to the Insecticides Act 1968 will not change the situation and cannot automatically gives the conclusion that because of the non-mentioning of subject item in the said Schedule, the item is not an 'insecticide'. The dictionary meaning and the explanation given for the 'insecticides' in Wiki encyclopedia make it clear that the 'insecticide' is a chemical or a substance used for killing insects. The literature produced by the assessee also says the same. Therefore, no doubt that the subject item is an 'insecticide' covered by the chapter sub-heading 3808.10 of Central Excise Tariff; when it is so the item will be covered by the entry at Sl.No.15 of the Annx.I attached to the Notification No.50/2003 Central Excise (supra). Thus, the goods namely Dermitol C-024 are covered under Central Excisie Tariff sub-heading 3808.10 and they are not entitled to the benefit of the Notification No.50/2003 Central Excise (supra).

5.5 Further, there are no evidence or documentary proof given by the Appellant to prove otherwise. In other words the Appellant has failed to prove that the goods are not insecticides but are plant growth regulator (Tariff sub-Heading 3808.20) or are of "other" category of chapter sub-Heading 3808.90 of Central Excise Tariff.

6. In the light of above discussion, the impugned order is sustained and the appeal is dismissed as without merits.

(Pronounced on 20.04.2017)

(Justice (Dr) Satish Chandra)
President

(Ashok K Arya )
Member(Technical)

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