CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Customs Appeal No. 1655 of 2012

(Arising out of OIA No. 08/2012 (V) CH dt.21.03.2012 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Visakhapatnam)

Commissioner of Customs
Visakhapatnam - CUS ......**Appellant**
4th Floor, Customs House, Port Area,
Visakhapatnam, AP – 530 035

VERSUS

Coromandel Fertilizers Ltd
Sardar Patel Road, Coromandel House,
Secunderabad – 500 003 ......**Respondent**

Appearance

Shri Chittaranjan Wagh Prakash, AR for the Appellant.
Shri Ch. Sumanth, Advocate for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30402/2023

Date of Hearing: 01.11.2023
Date of Decision: 01.11.2023

[Order per: A.K. JYOTISHI]

Revenue is in Appeal against the Order passed by the Commissioner (Appeals), whereby, the Commissioner (Appeals) had held the item, "Calcium Nitrate", classifiable under CTH 3102 6000 and therefore, entitled to exemption under S.No.63 of Notification No. 04/2006-CE dated 01.03.2006.

2. The facts of the case are that the Respondent imported Calcium Nitrate from Dubai classifying it under CTH 3102 6000. The assessing officer did not agree with its classification and held that the product is correctly classifiable under CTH 2834 2990 and therefore, not entitled to exemption under Notification No.04/2006-CE dated 01.03.2006. On Appeal, the Commissioner (Appeals) examined the classification, after going through the composition of the product, manufacturing process, rival entries under the Tariff and Chapter Notes to Chapter 28 & Chapter 31. He also took note of the fact that the HSN for CTH 2834 indicates that Calcium Nitrate obtained by treating crushed

limestone with Nitric Acid, whereas, in the instant case, the product has been manufactured by mixing Calcium Nitrate with Ammonium Nitrate and therefore, these are two different manufacturing processes. He also took into account the composition which showed as under:

Composition:

$Ca(NO_3)_2$	–	77-78%
NH_4NO_3	-	6-7%
H_2O	-	15-16%

Calcium Nitrate contains 15.5% of Nitrogen and 19% of water-soluble Calcium and the product is water soluble and particularly, suitable for water-borne fertilizer application systems.

3. The Respondent's submission regarding the manufacturing process of Calcium Nitrate (Odda process) was examined by the Commissioner (Appeals) to come to the conclusion that Ammonia was deliberately being added to produce double salts of Calcium Nitrate and Ammonium Nitrate, for use as fertilizer and that can be used as Nitrogen fertilizer.

4. On the other hand, the Department has mainly relied on the fact that Calcium Nitrate is clearly a separate chemically defined compound and therefore, by virtue of Chapter Note to Chapter 28, it gets included and therefore, will not fall under Chapter 31.

5. Heard both sides and perused the records.

6. We have seen the manufacturing process as explained by the Respondent and we find that Calcium Nitrate imported by the Respondent is produced by dissolving a Calcium salt such as limestone or Calcium Phosphate rock, in Nitric Acid. In the latter case, the Calcium Nitrate is a co-product of the Odaa Nitrophosphate fertilizer process. Calcium is separated from acidic liquor in a crystallizer as Calcium Nitrate and the aqueous acidic salt is adjusted with Nitric Acid and then neutralized with Ammonia in order to get the correct amount of Ammonium Nitrate. Thereafter, the Calcium-Ammonium Nitrate solution is then evaporated and granulated or prilled into solid particles resulting in formation of double salt AN5CN10H2O.

7. In order to classify this product under Chapter 31, we must first find whether the product is a separate chemical element or a separate chemically defined compound, whether or not containing impurities or otherwise. The

Commissioner (Appeals) has analyzed the whole issue in the light of the manufacturing process involved and found that the product is a mixture of Calcium Nitrate and Ammonium Nitrate. Thereafter, even if it is a separate chemically defined compound, Chapter Note 3(c) to Chapter 28 excludes the product mentioned in Note 2 to Chapter 31. In other words, even if the product is a separate chemically defined compound, generally, it will be classifiable under Chapter 28 except when it gets covered by virtue of Chapter Note 2 to Chapter 31.

8. Chapter Note 1(b) excludes separate chemically defined compounds. However, it does not excludes such separate chemically defined compounds which are otherwise covered in Note 2(a), 3(a), 4(a) or 5 below. Chapter Note 2(a)(v) covers double salts (whether or not pure) or mixtures of Calcium Nitrate and Ammonium Nitrate. Thus, by virtue of harmonious reading of Chapter Note to Chapter 28 & Chapter 31, it would be obvious that the mixture of Calcium Nitrate and Ammonium Nitrate is rightly classifiable under CTH 3102. Therefore, we do not find any ground to interfere with the Impugned Order passed by the Commissioner (Appeals).

9. Accordingly, we dismiss the Appeal.

(Operative part of the Order was pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda