

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75196 of 2021

(Arising out of Order-in-Appeal Nos. KOL/CUS(PORT)/AKR/36-39/2021 dated 11.01.2021 passed by Commissioner of Customs (Appeals), Kolkata)

M/s. Indian Trading Bureau Pvt. Ltd.

(28, Dr. Sundari Mohan Avenue, Kolkata-700014)

Appellant

VERSUS

Commr. of Customs (Port), Kolkata

(Customs House, 15/1, Strand Road, Kolkata-700001)

Respondent

With

(1) Customs Appeal No. 75197 of 2021 (Indian Trading Bureau Vs. Commr. of Customs (Port), Kolkata (2) Customs Appeal No. 75198 of 2021 (Indian Trading Bureau Vs. Commr. of Customs (Port), Kolkata (3) Customs Appeal No. 75199 of 2021 (Indian Trading Bureau Vs. Commr. of Customs (Port), Kolkata (4) Customs Appeal No. 75860 of 2021 (Commr. of Customs (Port), Kolkata Vs. Indian Trading Bureau (5) Customs Appeal No. 75861 of 2021 (Commr. of Customs (Port), Kolkata Vs. Indian Trading Bureau (6) Customs Appeal No. 75862 of 2021 (Commr. of Customs (Port), Kolkata Vs. Indian Trading Bureau (7) Customs Appeal No. 75863 of 2021 (Commr. of Customs (Port), Kolkata Vs. Indian Trading Bureau (8) Customs Appeal No. 75864 of 2021 (Commr. of Customs (Port), Kolkata Vs. Indian Trading Bureau

1. (Arising out of Order-in-Appeal Nos. KOL/CUS(PORT)/AKR/36-39/2021 dated 11.01.2021 passed by Commissioner of Customs (Appeals), Kolkata)

2. (Arising out of Order-in-Appeal Nos. KOL/CUS(PORT)/AKR/36-39/2021 dated 11.01.2021 passed by Commissioner of Customs (Appeals), Kolkata)

3. (Arising out of Order-in-Appeal Nos. KOL/CUS(PORT)/AKR/36-39/2021 dated 11.01.2021 passed by Commissioner of Customs (Appeals), Kolkata)

4. (Arising out of Order-in-Appeal Nos. KOL/CUS(PORT)/AKR/580-584/2019 dated 06.09.2019 passed by Commissioner of Customs (Appeals), Kolkata)

5. (Arising out of Order-in-Appeal Nos. KOL/CUS(PORT)/AKR/580-584/2019 dated 06.09.2019 passed by Commissioner of Customs (Appeals), Kolkata)

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6. (Arising out of Order-in-Appeal Nos. KOL/CUS(PORT)/AKR/580-584/2019 dated 06.09.2019 passed by Commissioner of Customs (Appeals), Kolkata)

7. (Arising out of Order-in-Appeal Nos. KOL/CUS(PORT)/AKR/580-584/2019 dated 06.09.2019 passed by Commissioner of Customs (Appeals), Kolkata)

8. (Arising out of Order-in-Appeal Nos. KOL/CUS(PORT)/AKR/580-584/2019 dated 06.09.2019 passed by Commissioner of Customs (Appeals), Kolkata)

APPEARANCE :

Mr. S. Chatterjee, Advocate for the Appellant/Respondent

Mr. S. Debnath, Authorized Representative for the Respondent/Appellant

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75088-75096/2024

Date of Hearing : 23 January 2024

Date of Decision: 23 January 2024

PER R. MURALIDHAR:

In these Appeals filed by the importer Appellant and Revenue, the issue is same. As per the importer, the product imported by them, Betine Hydrochloride falls under CETH 230990 whereas the Revenue has taken the stand that the same will fall under 29239000. In four Appeals, after due process, the Commissioner (Appeals) has held that the product cannot be classified under CETH 230990 and should be classified under 29239000 only and has confirmed the demands. Being aggrieved, the importer is before the Tribunal. In other five Appeals, the Commissioner (Appeals) has held that the product in question rightly falls under CETH 230990 and has set aside the confirmed demands under the Order-in-Original. Being aggrieved, the Revenue is before the Tribunal.

2. The Appeals filed by the importer is against the OIA Nos. 36-39/2021 dated 11/01/2021. The Appeals filed by the Revenue are against OIA Nos. 580-584/2019 dated 06/09/2019 and other such

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OIAs. After going through the both OIA's and the clarification issued by the CBIC vide instruction No. 34/2022 dated 30.12.2022 vide F. No. 401/92/2022-Cus-III read with Annexure containing list of Animal Feed Additive/Supplement, it is seen that Betine HCL 93-98% are classifiable under Animal Feed Grade only.

3. The Commissioner (Appeals) vide his OIA Nos. 580-584/2019 dated 06/09/2019 has given the following findings:-

8. I find that the practice of assessment of similar types of items for a considerable period throughout the country is to classify the goods under heading 2309. Obviously, that does not mean that such classification is sacrosanct. The classification may be altered subsequently on the basis of new fact unearthed and/or change in legal parameters. The consultant has referred the circular issued by CBEC under File No. 96/1/2017 CX. 1 dated 19.01.2017 which instructs that (para 8 of the circular) a long standing practice of assessment which is widely prevalent across the country should not be suddenly changed by issuing Show Cause Notice demanding duty. Such issues should be preferred to the Board in a comprehensive matter with inputs obtained from the other zones regarding the proposed change in the practice of assessment... I find enough force in such submission. In view of the said circular, the proper way of action for the assessing officer was to release the goods provisionally and to refer the matter to Board for proper guidance and instructions but this method was not adopted by him. Moreover, no sample was drawn for chemical test of the imported item. Thus, there is clear violation of the said circular of CBEC.

13. I find from the literature of the manufacturer that all these items have been registered as feed additives for use in animal nutrition on global basis. These are labeled as feed additives for animal nutrition purposes corresponding to the according legislation. These feed additives are produced according to the International Quality Standard FAMI QS which is only applicable to special feed ingredients and their mixture. Also in these literature/certificates, these items are mentioned as poultry feed additive and not intended for human consumption or for medical use.

14. The department did not resort to any chemical testing on the plea that there was not dispute with regard to description of the goods. I find that the description of the goods is with reference to their Brand name only which does not suggest any classification. The products are undisputedly chemical

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products, the classification of which depends on the composition and with reference to Section and Chapter notes. The department did not prefer to have opinion of any chemical expert.

15. I do not find any force in department's plea for not getting the goods tested. When the dispute is with regard to classification especially for chemical products, it would have been proper to get the goods tested chemically to decide the classification. In absence of such testing, the literature of the manufacturer of international repute could not be brushed aside by the assessing officer merely as per his understanding of the matter. In the circumstances, due weightage has to be given to the different literature of the manufacturer submitted by the appellant.

18. I find from the literature that in preparing Betaine Hydrochloride 98% Feed Grade, different items are missed with vitamins and processed with render the goods suitable for specific use i.e. additive for animal feed and render the goods unsuitable for general use i.e. for human use and medicinal use. From the literature, find that the goods are registered for use in the animal nutrition, etc. and is not suitable for food and pharma application. Therefore, classification of this item under heading 2936 is completely ruled out. Consequently, there may not be any doubt that the said item is correctly classifiable under heading 2309.

20. In view of above, I confirm the classification of imported goods Betaine Hydorchloride 98% Feed Grade setting aside the under heading 2936 done by the lower authority in the impugned bills of entry and re-assess accordingly under sub-heading 2309 90 90. [Emphasis supplied]

4. After going through these detailed analysis and statutory provisions, we do not find any reason to defer with the conclusion arrived at by him, particularly in view of the clarification issued by the Department of Revenue vide Instruction No. 34/2022. Even from factual matrix, we find that in none of these cases, the Department has drawn any sample to fortify their argument that the product will fall under CETH 2923900. On the other hand, as observed by the Commissioner (Appeals), the product literature provided by the Appellant very clearly shows that these all are part of Animal Feed and not fit for Human consumption for preparation of medicines. Again as observed by the Commissioner (Appeals) no tests have taken up before the classification is changed arbitrarily. Therefore, we

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dismiss the Appeals filed by the Revenue and allow the Appeals filed by the Appellant with consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja