

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I**

APPEAL No. C/1012/2009

(Arising out of Order-in-Appeal No. 185/2009/NCH/AC/VIIB/09-10 dated 22.7.2009 passed by Commissioner of Customs (Export), Mumbai)

Commissioner of Customs (EP), Mumbai

Appellant

Vs.

Kalgov Labs Ltd.

Respondent

Appearance:

Shri Chatru Singh, Assistant Commissioner (AR), for appellant
Shri J.C. Patel, Advocate, for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 31.1.2018

Date of Decision: 31.1.2018

ORDER NO. **A / 86384 / 2018**

Per: Ramesh Nair

The instant appeal has been filed by the revenue against Order-in- Appeal dt. 22.07.2009 issued by the Commissioner (Appeals), Mumbai - I. The brief facts of the case are that the Respondent had imported Sodium Ascorbate USP from china when there was Anti Dumping duty in force on Vitamin C and its synonyms imported from China. The revenue on post importation examination of Bill of Entry found that no Anti

dumping duty in terms of Notification No. 159/2003 – Cus dt. 26.10.2003 was imposed at the time of clearance of imports. Accordingly less charge demand notice was issued to the Respondent. The adjudicating authority vide order dt. 22.07.2009 relied upon clarification obtained from the Dy. Chief Chemist that Sodium Ascorbate was Vitamin C and as per the HSN-EN that the end use of Sodium Ascorbate was Vitamin C and therefore the goods are one form (hence synonym) of Vitamin C. The Respondent against the said order filed before Commissioner (Appeals) who allowed the appeal. Hence the present appeal by the revenue.

2. Shri Chatru Singh, Id. AC, AR appearing for the revenue submits that the DYCC in his clarification dt. 08.06.2006 clearly mentioned that the Sodium Ascorbate is Vitamin 'C' and Harmonised System of Nomenclature mentions the end use of Sodium Ascorbate as Vitamin – C. Thus it is one of the form of Vitamin 'C' only i.e synonyms can be deduced from its end use which is same for ascorbic acid. Besides this the note under notification No. 159/2003 dt. 24.10.2003 mentions the most commonly synonyms and not the only synonyms words. The list of synonyms of Vitamin 'C' under Entry No. 867 of Merck Index is not exhaustive but merely a guide for reference. He submits that the Appellate authority has wrongly held that there is separate entry even in IP for Sodium Ascorabte hence it proves that the Pharmacopeia also

treated the two differently and also that according to HSN Explanatory Notes mere end use of sodium ascorbate being Vitamin 'C' cannot equate the two as synonyms. That the Appellate authority has wrongly held that the sodium ascorbate imported from China being neither Vitamin 'C' nor the synonyms and does not fall under the purview of Notification No. 159/2003 – Cus dt. 26.10.2003. He relies upon the meaning of term Sodium Ascorbate as given in Wikipedia, Princeton's and Merck index. He thus submits that the Respondent are liable for Anti Dumping duty.

3. Shri J.C. Patel, Id. Counsel appearing for the Respondent reiterates the findings of the impugned order to show that the same is based upon appreciation of facts and relevant Chemical literatures.

4. We have perused the facts of the case and the relevant material produced before us. In terms of Notification No. 150/2003 – Cus –dt. 26.10.2003, Anti Dumping duty is liable to be paid. We reproduce the findings of the Appellate Commissioner as under :

“It is commonly known that Sodium Ascorbate is salt made from ascorbic acid i.e (Vitamin 'C'). Salt of an acid cannot be synonymous with the acid itself. In support the Appellant submitted entries of Ascorbic acid entry # 855 of 9th edition of Merck index) and sodium ascorbate (entry # 8323 of 9th edition of Merck index), Chemical formula, synonyms and

properties of two are different. To 0.889 mg of ascorbic acid (Vitamin C), implying that the molecular weight and hence formulae of the two are different. Most prominently, the PH value of ascorbic acid (Vitamin C) is between 2.2. and 2.5 and that of Sodium ascorbate is between 7 and 8 which is a proof that the former is an acid and the latter is a salt. The DY. CC had clarified was that as per Indian Pharmacopeia (IP) both ascorbic acid and Sodium ascorbate were described under category of Vitamin C only. The adjudicating authority interpreted this opinion as sodium ascorbate being same as Vitamin C. The Appellant submitted a copy of IP General Notices wherein it is explained that “category’ is provided for information only and is indicative of the medical or pharmaceuticals basis for recognition in the Pharmacopeia. The IP also clarifies that the main titles in Pharmacopeia are given in Bold Capitals, followed by synonyms. In India Pharmacopeia there are two distinct entries for ASCORBIC Acid (main title), followed by synonyms such as Vitamin – C, L – ascorbic acid. There is a separate entry, even in IP, for sodium ascorbate. This proves that in Pharmacopeia also the two are treated differently. Now coming to HSN EN , mere end use of sodium ascorbate being Vitamin C cannot equate the two as synonyms. In am therefore of the opinion that sodium ascorbate imported from China being neither Vitamin C nor the synonyms, does not fall in the purview of the notification No. 159/2003.”

5. We find that the revenue in their appeal has merely relied upon the end use of the imported goods as stated by Dy. CC. However the fact remains that only the end use of the impugned good i,e Sodium Ascorbate does not make it fall under the category of Vitamin C. We are in agreement with the above reasoning adopted by the Appellate Commissioner

and thus do not find any infirmity in the impugned order. We thus uphold the impugned order and reject the appeal filed by the revenue.

(Pronounced in court)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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