

M/s Toshiba and Batteries Ltd., and House, Cochin

Vs

Collector of Customs, Cochin

Civil Appeal Nos. 3868 to 3932 and 4180-82 of 1988

(S. Ranganathan JJ)

20.12.1990

JUDGMENT

RANGANATHAN, J. -

1. The appellant is the same in these sixty-eight appeals, which raise a common point. All the appeals are, therefore, disposed of by a common order.
2. The common issue raised in this batch of appeals is a simple one : viz. whether the goods in question fall under one or the other of the two headings in the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as the 'customs tariff') referred to later.
3. The appellant-assessee, as its name indicates, is a manufacturer of dry batteries. For this manufacture, it imports electrolytic manganese dioxide from abroad having a manganese dioxide content of 91 per cent. Its claim is that customs duty is payable on this item under heading 25.01/32(3) of the customs tariff. The revenue, on the other hand, says that the item imported falls under heading 28.01/58 of the customs tariff. It may be mentioned that the rate of duty under both the headings is the same. The only difference is that if the item is classified under the latter heading, as claimed by the department, the assessee will be liable to pay countervailing duty as well whereas, if it is classified under the former, as suggested by the appellant, no countervailing duty will be payable. We shall proceed to refer to the nomenclatures of the relevant entries in the First Schedule to the Customs Tariff Act, 1975.
4. Section V of the above schedule deals with mineral products. It has three chapters, Nos. 25, 26 and 27. Chapter 25 deals with "salt, sulphurs, earths and stone; plastering materials, lime and cement". In this chapter, there occurred, at the relevant period, the following item :

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Heading No.	Sub-heading No.	and description	Rate of Duty	of article	Standard	
25.01/32	Mineral substance, not elsewhere specified including clay, earths, earth colours, natural abrasives, salt, sulphur, slate and stone; cement, all sorts not elsewhere specified (including portland cement and clinker); lime; plasters with a basis of calcium sulphate whether or not coloured, but not including plaster specially prepared for use in dentistry :	(1) Not elsewhere specified	100%	(2) Asbestos raw including fibre	60%	
		(3) Battery grade manganese dioxide	100%	90%	(4) Cements, all sorts, not elsewhere	100%
		50% specified (including portland cement and clinker)		(5) Cryolite natural	60%	
		(6) Flour-spar	100%	(7) Graphite, natural	100%	
				90%	(8)	

Mineral phosphates, natural, imported Free in a form indicative of their use as fertilisers (9) Rutile in granular or powder form for 100% use otherwise than for extraction of metal (10) Insoluble sulphur 100% (11) Sulphur of all kinds, other than 10% insoluble sulphur, sublimed sulphur precipitated sulphur and colloidal sulphur

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5. Chapter 28, to which reference is made by the department, comes under Section VI of the schedule instituted "Products of the chemical or allied industries" covering chapters 28 to 38. Chapter 28 deals with "Inorganic chemicals; organic and inorganic compounds of precious metals, of rare earth metals, of radioactive elements and of isotopes." In this chapter, there is a very detailed entry particularising various kinds of chemicals, components etc. and no useful purpose will be served by setting out the entry in full. The department relies only on the following portion of the entry :

Heading Sub-heading No. and Standard rate of duty No. description of article

28.01/58 Chemical elements, inorganic chemical compounds and other products as specified in Notes 1 and 2 to this chapter :

(1) Not elsewhere specified 100%

6. On behalf of the assessee, it is submitted that the item imported by it, though described as electrolytic manganese dioxide, is commercially known as "battery grade manganese dioxide" and falls squarely under serial No. (3) set out under heading 25.01/32. It is emphasised that this is a specific entry covering the goods in question while heading 28.01 is a general heading pertaining to various kinds of chemicals. It is pointed out that note 2 to chapter 28 enumerates a number of products which are to be classified in this chapter but manganese dioxide is not one of the items so specified. Also, note 3 to the chapter clarifies that the chapter does not cover, inter alia, "(a) sodium chloride and magnesium dioxide, whether or not chemically pure, and other products falling within Section V." Since battery grade manganese dioxide finds a place in chapter 25 as indicated above, it is argued, it is clearly excluded from the purview of chapter 28.

7. In the light of the above arguments, it becomes necessary to determine the scope of Item (3) under chapter 25, heading 25.03. Prima facie, it may appear that the appellant's contention that the goods should be classified under an item which directly seems to cover its description has to be accepted. However, on behalf of the department, it is pointed out that section V in which chapter 25 occurs deals with mineral products and our attention is drawn to note 1 for the interpretation of the items under Chapter 25, which reads thus :

"Except where the context otherwise requires, this Chapter is to be taken to apply only to goods which are in the crude state, or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by floatation, magnetic separation or other mechanical or physical processes (not including crystallisation) but not calcined or subjected to any further process other than a process specially mentioned in respect of the goods described in Note 3."

8. This note, it is pointed out, clearly excludes the goods imported by the appellant as pointed out by the Assistant Collector, whose findings, revised by the Collector (Appeals) but confirmed by the

Tribunal, are to the following effect :

"No evidence has been produced to show that the manganese dioxide under reference is crude mined ore. The write ups produced state "Battery Grade Manganese Dioxide" could be obtained by electrolysis of MnO_4 during the process of electrolysis, MnO_2 gets deposited on the anode. The deposit is hammered out and ground to a finer mesh and treated with patented processes for neutralising the acid that may be encapsulated in the deposited MnO_2 . From the photostat of literature produced it is seen that the electrolysis process consists of grinding, dissolution, leaching, electrolysis, hammering, washing, crushing, neutralisation, pulverising etc. These methods do not confine to the methods mentioned in Note (1) to Chapter 25 CTA.

The description of the goods in the import document is "Electrolytic Manganese Dioxide for Dry Battery - MnO_2 - 91 per cent". The laboratory test report confirms these as manganese dioxide of declared purity. The chapter (note) No. 1 of chapter 25 states that "except where the context otherwise requires", the goods should satisfy the definition given therein. It is a fact that various grades of manganese dioxide exist and only few are suitable for use as battery grade. The sub-heading has to be read along with main heading and cannot be read in isolation. Therefore, the main heading covers only crude manganese dioxide in crude form purified only by methods mentioned in chapter 25 Note 1. The item imported is electrolytic manganese dioxide of very high purity and this chemically pure manganese dioxide would therefore qualify for assessment correctly under chapter heading 28.01/58(1), CTA with c.v. duty under Item 68 CET."

9. We are of the opinion that the department's contention is well founded. In view of note 1 to chapter 25, Item (3) under heading 25.01/32 has to be understood, unless the context requires otherwise, to refer to the goods described therein either in their crude state or in a purified state provided the processes of purification employed are only mechanical or physical processes, particularly those mentioned in the said note. This raises two questions : (1) whether battery grade manganese dioxide is available in the crude form and (ii) if the goods in question represent manganese dioxide in a purified form, whether the processes applied for the purification or refinement are the processes permissible under note 1. The evidence on record compels an answer to each of the questions against the appellant. We do not wish to refer in detail to the literature placed before the authorities as there is really no controversy about the material facts. It is common ground indeed before us that battery grade manganese dioxide is available in crude ore form in several places such as tropical African regions. In fact, the order of the Tribunal refers to a case in which natural battery grade ore, obtained by highly selective mining, was imported. Natural and electrolytic manganese dioxide are different items, separately classified. For example, under the import policy while Item 140 refers to "electrolytic manganese dioxide", Item 220 talks of "manganese dioxide, chemical/synthetic/monada grade/natural" battery grade manganese dioxide, in its crude or raw form has also been found to be a commodity dealt with in international trade, though said to be slowly depleting. The manganese dioxide imported by the appellant is electrolytic manganese dioxide which is manufactured from the ore by a process of electrolysis. It is stated in the literature produced by the appellant - and this is not in dispute - that the same is obtained by a process of not only grinding, dissolving, washing, crushing, neutralising and pulverising but also of electrolysis. The product thus obtained, it is said, has also uses other than in dry batteries. Purification or upgradation of the manganese dioxide content of crude ore by the process of electrolysis, which is a chemical, and not a mechanical or physical, process takes it outside the purview of Item 25.01/32.

10. Shri Sampath submits that not all the items specified in Item 25.01/32 are items of minerals in crude form. Cement, it is pointed out, is one of the items included there. It is also said that where the intention was to include only the natural mineral product it has been stated so as, for example, against Items (5), (7) and (8). It is, therefore, submitted that this limitation does not apply to Item (3). We do not find substance in this argument. So far as cement is concerned, it is an item which, by its very nature, excludes the applicability of note 1. In regard to the second point, the description of Items (5), (7) and (8) places a further restriction that these minerals, only in their natural forms, will fall under the heading in question. It is true that the items set out under Item 25.01/32 read in the light of notes 2, 3 and 4 read in the chapter bring under its purview not only minerals in their natural form but also various items derived therefrom in several ways including, in some cases, chemical processes. But Note 1 requires every entry under the sub-item to be considered independently in the light of what it states - viz. that only the crude, raw or physically charged forms are to be taken into account - unless there is something in the nature of the entry which precludes the applicability of note 1. Thus, for example, if battery grade manganese dioxide were not available for import, except in the upgraded form, the assessee's claim would be well founded and it will be covered by Item 25.01/32(3) even though manufactured under an electrolytic process. But since it has been found as a fact that battery grade manganese dioxide is available in the crude unrefined form only that type of it is covered by Item 25.01/32(3). In view of the interpretation placed by us on Item 25.01/32, it is unnecessary to discuss the decisions cited by Sri Sampath setting out certain general principles regarding interpretation of tariff items in cases of difficulty.

11. The result of the discussion is that, although the product imported by the appellant is battery grade manganese dioxide, it does not fall under heading 25.01/32 because it is not the ore in its crude form but is the ore in a form purified or upgraded by electrolysis. Once the applicability of chapter 25 is out for this reason, the only item that can cover the goods in question is heading 28.01/58, since there is no dispute that the item in question is a chemical product or chemical compound.

12. In our view, therefore, the assessing authority and the Tribunal took the correct view. These appeals, therefore, fail and are dismissed. But we make no order as to costs.

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