

SUPREME COURT OF INDIA

Union Carbide India Ltd.

Vs.

Collector of Customs, Madras

(S Bharucha and S Sen JJ.)

05.12.1996

JUDGMENT

1. These appeals arise out of the judgments and orders of the Customs, Excise and Gold (Control) Appellate Tribunal. The principal order under challenge is in Civil Appeal No. 4169 of 1986. In the other appeal the aforementioned judgment and order was followed. The facts are similar and can be briefly stated.

2. The appellants imported manganese ore from Moanda in Africa. They used such ore in the dry batteries which they made. The Revenue sought to levy Customs duty upon the said manganese ore under Heading 25.01 /32(3) of the First Schedule to the Customs Tariff Act, 1975. The appellants contended that the said manganese ore fell under Heading 26.01(1). The Tribunal noted that it was an agreed position that the imported goods were 'ore', 'ore.-concentrate' and were 'ore belonging to certain known "mineralogical species"'. The Tribunal, however, came to the conclusion that the said manganese ore was natural battery grade manganese dioxide classifiable under Heading 25.02/32(3):

3. For the appreciation of the controversy, it is necessary to set out certain provisions of the Tariff. Chapter 25 applies to goods which are in the crude state or which have been washed, crushed, etc., but not subjected to any process other than a process specially mentioned in respect of certain goods, with which we are not concerned. Heading 25.01/32(3) deals with mineral substances not elsewhere specified and sub-item (3) thereof refers to battery grade manganese dioxide. Chapter Note 2 of Chapter 26 states that for the purpose of Heading 26.01 metallic ores mean minerals of mineralogical species actually used in the metallurgical industry for the extraction of mercury, or the fissile or radio-active metals of Chapter 28, or of the metals of Section XIV or XV even if they are intended for non-metallurgical purposes. Heading 26.01 refers to metallic ores and concentrates; roasted iron pyrites. Sub-heading (1) covers those metallic ores as are not specified in sub-headings (2) to (4). Chapter 28 deals with inorganic chemicals, organic and inorganic compounds of precious metals or rare earth metals, of radio-active elements and of isotopes. Heading 28.01/58 refers to chemical elements, inorganic chemical compounds and other products as specified in Notes 1 and 2 (with which we are not concerned). Sub-heading (1) deals with chemical elements and inorganic chemical compounds not elsewhere specified.

4. Learned Counsel for the appellants drew our attention to the judgment of this Court in *Toshiba Anand Batteries Ltd., Anand House, Cochin v. Collector of Customs, Cochin*. The assessee there was also a manufacturer of dry batteries, for the manufacture of which it had imported electrolytic manganese dioxide from abroad having a manganese content of 91%. The assessee's claim was that it fell under Heading 25.01/32(3) and the Revenue claimed that it fell under Heading 28.01/58. This Court held that although the imposed goods were battery grade manganese dioxide, they did not fall under Heading 25,01/32 because they were not ore as it was in crude form but were ore in a form purified or upgraded by electrolysis. Once the applicability of Chapter 25 was nil for this reason, the only item that could cover the goods in question is bound to In-Heading 28.01/58, since there was no dispute in it the item in question was a chemical product or a chemical compound.

5. Learned Counsel for the appellant submitted that, having regard to this judgment, the Revenue could not contend, as it does not, that the said manganese ore with which we are concerned fell under Heading 25.01/32. He also submitted that the Tribunal had not come to a finding of fact that the said manganese ore was, in fact, battery grade manganese dioxide which alone would have entitled it to hold that it fell within Heading 25.01/32(3).

6. Clearly, the said manganese ore cannot for the aforesaid reasons be held to fall within Heading 25.01/32(3) and that was the only case of the Revenue before the Tribunal, which upheld it. Now that the order of the Tribunal must be set aside, the question is under which Heading must the said manganese ore be classified. The only available option suggested by the Revenue was Heading 28.01/58, but that refers to chemical elements; organic or inorganic compounds of precious metals.... It would be difficult to hold that the said manganese ore falls under such classification. The most appropriate classification, as we see it, therefore, is that suggested by the appellants. Metallic ores are defined in Chapter Note 2 of Chapter 28 as meaning minerals of mineralogical species of the metals of Section XV. Manganese is a metal covered by Section XV. It is, as the Tribunal has noted, the case of both sides of the said manganese ore is ore concentrate belonging to certain known mineralogical species. The said manganese ore must, therefore, fall within Heading 26.01(1).

7. The appeals are, accordingly, allowed and the judgments and orders under appeals are set aside. The said manganese ore shall be classified as aforementioned.

8. No order as to costs.