

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

Customs Appeal No. 41166/2018

(Arising out of Order-in-Appeal Sea C. Cus. II No. 83/2018 dated 12.3.2018
passed by the Commissioner of Customs (Appeals – II), Chennai)

Commissioner of Customs

Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Appellant

Vs.

M/s. SMA Trading Company

Old No. 94, New No. 38
Moore Street, Mannady
Chennai – 600 001.

Respondent

APPEARANCE:

Shri R. Rajaraman, AC (AR) for the Appellant
Shri K. Mohana Murali, Advocate for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Sanjiv Srivastava, Member (Technical)

Final Order No. **40291 / 2022**

Date of Hearing : 08.08.2022
Date of Decision: 11.08.2022

Per Ms. Sulekha Beevi C.S.

The above appeal is filed by the department against the order passed by Commissioner of Customs (Appeals) who reclassified the goods namely "Axe Brand Universal Oil" under CTH 30049011.

2. Brief facts are that the respondents M/s. SMA Trading Company imported "Axe Brand Universal Oil (3ml, 5ml, 10 ml, 25ml and 56 ml)" vide Bill of Entry dated 1.12.2016 and self-assessed the same by classifying the goods under CTH 30049011 adopting RSP based CVD assessment only for 28 ml and 56 ml. On examination, it was found

that 12 pieces of individual packs of 3ml, 5ml, 10ml, 28ml and 56ml were packed in one bundle and it was mentioned on the label that these are to be sold in bundles of 12 pieces only. The department was of the view that the goods are to be classified under Chapter 33 and that all goods above 10ml should be assessed under section 4A of Central Excise Act, 1944. After due process of law, the original authority classified the goods under CTH 33079090. An appeal was filed by the importer before the Commissioner of Customs (Appeals) and vide the order impugned herein, the Commissioner (Appeals) set aside the classification, upheld the classification adopted by the importer and classified the goods under CTH 30049011. He also held that the goods above 10 ml come under the purview of RSP based assessment in terms of sec. 4A of Central Excise Act, 1944. The department has filed this appeal challenging only the issue of classification contending that the goods are to be classified under Chapter 33.

3. On behalf of the appellant, learned AR Shri A. Rajaraman appeared and argued the matter. He reiterated the grounds of appeal. He submitted that while setting aside the order passed by lower authority on the issue of classification, the Commissioner (Appeals) has erred in interpreting the test report of Regional Ayurvedic Drug Development Institute. He argued that the Commissioner (Appeals) has overlooked the fact that the test report dated 8.6.2017 is not conclusive. So also the Commissioner (Appeals) has erred in interpreting the applicability of Chapter 33 stating that it is meant for cosmetics which is a wrong interpretation since the Heading of Chapter 33 reads as "Essential Oils and Resinoids, Perfumery Cosmetic or Toilet Preparation". Hence the goods in question would fall under Chapter 33

only. Further, the respondent has not been able to conclusively establish that the goods have any therapeutic and prophylactic properties. He prayed that the appeal may be allowed.

4. The learned counsel Shri K. Mohana Murali appeared for the respondent. He stated that the respondent has accepted the order passed by the Commissioner (Appeals) with regard to classification as well as reassessment of valuation. The department has filed the appeal contesting classification only. The respondents had classified the goods under Chapter 30 on the ground that the goods have therapeutic and prophylactic properties. The argument of the department that the report of the lab is inconclusive cannot be accepted as the lab normally gives report based on queries addressed by the authorities. The issue is whether axe oil is a medicament. He argued that similar products such as Vicks, Amrutanjan, Tiger liquid balm have been held to have therapeutic and prophylactic properties and are to be classified under Chapter 30. He relied upon the following decisions:-

- (a) Amrutanjan Ltd. Vs. Collector of Central Excise – 1995 (77) ELT 500 (SC)
- (b) CCE, Raigad Vs. Elder Health Care Ltd. – 2006 (12) LCX 0088 (Tiger Balm)
- (c) Procter and Gamble India Ltd. Vs. CCE – 2004 (174) ELT 409 (Tri. Del.)

He prayed that the appeal may be dismissed.

5. Heard both sides.

6. The issue that has to be decided is whether "Axe Brand Universal Oil" can be classified under Chapter 30 or Chapter 33. The ingredients of Axe oil are printed each side of the box of Axe oil. The active compositions of the oil are *Pudhina ka Phool, Niligiri ka Tel, Gandhara*

tel, Karpoor. The relevant extract of the page from the Ayurvedic Pharmacopodia has been produced by the respondent. It shows that *pudhina* has therapeutic use and is used in the treatment of JIRNA JVARA (fever), *Sula, Agnimandhya* etc. Similarly, *Niligiri tel* or eucalyptus has therapeutic properties and is used in treatment of *sula, agnimandhya* (digestive impairment), *swasa* (dyspnoea, asthma) etc.

7. Similar goods in the nature of Amrutanjan, Vicks, Tiger Balm have been held to be classifiable under Chapter 30 as seen from the decisions relied by the learned counsel for the respondent. The Hon'ble Supreme Court in the case of Amrutanjan Ltd. (*supra*) held as under:-

“We are concerned in this appeal against the decision of the Customs, Excise & Gold (Control) Appellate Tribunal only with the appellant's product known as “Amrutanjan Pain Balm Ayurvedic”. The appellants sought classification of the same on the basis that it was an ayurvedic medicament under Tariff Heading 3003.30 of the Central Excise Tariff Act, 1985 and attracted nil rate of duty. The authorities below as also the Tribunal did not accept this classification. The Tribunal, in the order under appeal, upheld the contention of the Excise authorities that the balm was not an ayurvedic medicine because its main ingredients were Menthol IP, Camphor IP, Turpentine IP and Methyl Salicylate IP, which were of a synthetic nature. The contention of the appellants that the same ingredients had an ayurvedic nomenclature as could be found in authoritative text books was rejected because, according to the Tribunal, ayurvedic science recognises only the use of natural extracts from medicinal plants and these could not be substituted by modern chemical ingredients. The Tribunal said that the appellant had imported synthetic grade IP chemicals and had, with the intention of evading liability to excise duty, asked the suppliers to change the names upon invoices and labels to ayurvedic nomenclatures. Thus, methyl salicylate was changed to “pudina ka phool”, dementholised oil to “pudina ka tel”, thymol and turpentine to “ajwan ka phool” and “turpentine ka tel” and methyl salicylate to “winter green tel”. The Tribunal would appear to have overlooked the fact that the same article can have a use both in ayurvedic and in the western sciences and be known by different names. The letters IP after the article concerned only demonstrate that it is of pharmaceutical quality, as it ought to be if it is to be used in a medicinal preparation. The Tribunal was in error in considering that the articles afore-stated were synthetic in nature. Having regard to the evidence, we are inclined to hold that the articles afore-mentioned were articles known both to ayurvedic and western sciences and were refined for use in medicaments. Since they were known to ayurveda, their use in the making of the balm did not, by itself, make the balm a non-ayurvedic product.”

8. After appreciating the facts and evidences placed before us and following the decisions, we are of the considered opinion that the

appeal filed by the department is without any merits. The impugned order is upheld. The appeal is dismissed.

(Pronounced in open court on 11.8.2022)

(SULEKHA BEEVI C.S.)
Member (Judicial)

(SANJIV SRIVASTAVA)
Member (Technical)

Rex