SLIP OF COCONUT OIL – CENTRAL EXCISE TARIFF CLASSIFICATION BASED ON QUANTITY

Written by ***Rohan Naik***

3rd Year BBA LLB Student, School of Law, Christ (Deemed to be University)

Abstract

Tax is nothing but money that people have to pay the Government, which is used to provide public services. Though the collection of tax is to augment as much revenue as possible to the Government to provide public services, over the years it has been used as an instrument of fiscal policy to stimulate economic growth. Thus it is one of the socio-economic objectives. Some taxes are direct and others are indirect. Under our constitution, while the Central Government is vested with the powers of levy and collection of certain taxes, the State Governments are empowered to levy and collect certain other type of taxes. Excise Duty is an indirect tax levied and collected on the goods manufactured in India. In one of the recent cases that were argued in the Supreme Court, the classification of central excise tariff on the parameter of quantity was an issue. This article will deal with the same aspect i.e. (1) whether the Revenue can classify a product under a different heading based on the quantity of packaging, (2) can a product being packed in different sizes (small, medium, large) be classified into 2 or more different headings based on the packaging or the size of packets or common usage in the market based on packaging (small packet in a different heading, medium in another and large in another) even though it is the same product in each packet. Various means to do so will be analysed along with case laws. To end it all, the article will conclude that such classifications is vague in nature as a product with no change in composition can be classified under two separate headings just based on its packet size.

Key words: Central Excise, Packaging, Classification, Quantity and Size

Introduction

The whole issue of this article arose in 2009. Madhan Agro Industries Private Limited is/was a manufacturer of pure coconut oil marketed under the brand name of "Shanthi". In 2009, this industries are four job workers of M/s Marico Limited who had received 100% pure coconut oil from Marico Limited in bulk and had packed the same in small packages which were to be supplied back to Marico as per dispatch schedules issued. The packages in question carried a declaration claiming that they contained 100% coconut oil. The packages also have the trademark "Parachute" inscribed on them. The packaging also included 5ml pouches. All the packs are marked as "edible oil". The packaging and things related to it were done according to clause 5 Schedule 1 of the Edible Oil Packaging (Regulation) order 1998 read with serial no. 10 Schedule 3 of Standard of Weights and Measures Rules 1977. While Madhan Agro Industries contended that coconut oil in small packing is also classifiable as coconut oil under Heading 1513 (Animal or Vegetable fats and Oils and their cleavage products; prepared edible fats; Animal or Vegetable Waxes, which also includes coconut oil) the revenue claimed classification of the said products as "hair oil" under Heading 3305 (Essential Oils and Resinous, Perfumery, Cosmetic or Toilet Preparations, which includes hair oil and shampoo) while conceding that coconut oil in large packing i.e. beyond 2 Kgs. merited classification under Heading 1513[1]. This is the core dispute between the parties in this case.

When this issue was referred to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) held that the coconut oil manufactured and packed in "small containers" by the Marico Limited and Madhan Agro respectively is classifiable under Heading 1513 and not under Heading 3305 of the Central Excise Tariff Act, 1985 (hereinafter referred to as 'the Act').

Thus the Revenue made an appeal in the Supreme Court against the orders given by the Tribunal.

The question also may arise stating what the quantitative difference between Heading 1513 and 3305 is. The difference is that the excise duty for heading 1513 is 8% and heading 3305 is 16% as per the reportable case.

Object of Reasoning

[1] Commissioner Of Central Excise vs M/S. Madhan Agro Industries (2018) 67 GST 147 (SC)

Heading 1 : Manufacturing and Packaging

Excise duty is an indirect tax which is levied on manufactured goods, which are manufactured in India. Manufacture is "To make a good with tools and/or machines by effecting chemical, mechanical, or physical transformation of materials, substances, or components, or by simulating natural processes, usually repeatedly and on a large scale with a division of labour. Manufactured items often are, or are made out to be, different from other similar goods in one or more aspects, and are sold commonly under a particular brand name.[2]"

Section 2(f) of the Central Excise Act, 1944 states that manufacture includes any addition to the completion of a manufactured product, which is in relation to the goods with respect to the chapter notes of Schedule 1 of the Central Excise Tariff Act, 1985 (Deemed Manufacture), which is in relation to the goods specified in Schedule 3 of the Central Excise Tariff Act, 1985 which includes packaging and repackaging of such goofs or labelling and re-labelling of the containers and declaration or alteration of price on the said container for the purpose of retail.

Thus in normal sense one might say that Madhan Agro is not liable to pay excise as they were just packing the raw material i.e. coconut oil received from Marico Limited. But according to Schedule 3 of Central Excise Tariff Act, 1985, even packaging and labelling amounts to manufacture.

In the case of Srikanth Sachets Limited vs. Commissioner of Central Excise, it was stated that taking coconut oil and shampoo in bulk and making small sachets of 6ml, 8ml and 100ml packing and then affixing a brand name amounts to process of "Manufacture".[3]

Heading 2 : Headings and General Interpretation

The Central Excise Tariff Act gives out chapters under which each goods which is manufactured with the excise tariff duties for each heading per kilograms. Each chapter contains chapter notes which specify what products are classified under that specific chapter and heading.

Chapter note 1 of chapter 15 states that Chapter 15 does not cover:

[2] http://www.businessdictionary.com/definition/manufacture.html
[3] Srikant Sachets Pvt. Ltd. v. CCE 2005 (180) ELT 401 (T)

1. pig fat or poultry fat of heading 0209;
2. cocoa butter, fat or oil
3. edible preparations containing by weight more than 15% of the products of heading 0405
4. greaves
5. fatty acids, prepared waxes, medicaments, paints, varnishes, soap, perfumery, cosmetic or toilet preparations, sulphonated oils
6. Factice derived from oils

Thus it means that Chapter 15 contains all other kinds of vegetable oil and animal oil other than these products mention in the notes.

Chapter note 2 of Chapter 33 was used as an argument by the revenue and it states that: 'Headings 3303 to 3307 apply, inter alia, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packing of a kind sold by retail for such use.'[4]

This means that any product which is used for the purpose of preparation of hair products is classifiable under this chapter unless it is not already classified under another.

This is where the General interpretation Rules come into play. Rule 3 of the rules state as follows:

Rule 3 : When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows : (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar

[4] Commissioner Of Central Excise vs M/S. Madhan Agro Industries (2018) 67 GST 147 (SC)

as this criterion is applicable. (c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.[5]

When one looks into the provisions of this rule, specifically Rule 3(b), it becomes confusing because even though coconut oil is coconut oil (100% pure oil), due to common parlance, coconut oil is in most circumstances referred to as hair oil.

Heading 3: The Main Issue.

In this whole article, the main issue is whether 100% pure coconut oil can be classified as 'coconut oil' or as 'hair oil'. For a lay man, coconut oil can be coconut oil used for cooking, for application on the hair and body and many other things. But it all depends on common parlance or customer usage.

The primary objective of the Excise act is to raise revenue. According to V.S. Datey, for the purpose of classification, one must not rely upon the scientific and technical meaning of the terms and expressions used for the product, but must rely upon the popular meaning i.e. the meaning attached to the product by those using it. As per the Trade Parlance or Common Parlance, a word in statute should be construed in its popular sense and not in the strict and technical sense. Identity of a product is associated in mind of consumer with its primary functions. The consumer buys an article because it performs a specific function for him. This association with a product is highly important for classification.

Thus common parlance is nothing but what the consumers think about the product and what they use or buy it for. Thus if one goes by the method of common parlance, coconut oil, in most areas except for people from Kerala and South Canara, is considered as hair oil and not cooking oil or just coconut oil. Most consumers by coconut for the purpose of hair related use. The test of common parlance was also upheld in Kesarwani Zarda Bhandar vs.State of Uttar Pradesh[6].

[5] ibid
[6] Kesarwani Zarda Bhandar vs. State of Uttar Pradesh (2009) 227 ELT 337 (SC)

But when it comes to classification of a product, the product itself must also be checked. In the case of coconut oil, even if the majority of people use coconut oil as hair oil, one cannot classify it under the heading of 'hair oil' just because it is used so. When a product has its own separate heading under the same name, why would it be classified under a different heading? Justice Gogoi in the present case held the same. It is because of the confusion that arose with respect to the classification of coconut that the amendment of the act includes a separate heading for coconut oil (also mention in the heading as 'copra' which is nothing but dried coconut from which the oil is extracted) under the chapter vegetable oil and a separate heading for the products which are used for hair related products as 'preparation for uses on the hair'.

When it comes to general interpretations, it was clearly written on the packaging as '100% pure coconut oil' and 'edible oil'. If that is so, then by definition it would fall under the chapter of vegetable oil as vegetable oil is used for edible purposes. Coconut oil can be consumed and it can be used for cooking and eating. So it is the ignorance of the public that has become the common parlance in the present situation.

When it comes to classification based on packaging of the product, it is absurd. The revenue has contended that if coconut oil is packed in small quantities such as in 5ml sachets it is classifiable as hair oil and if it is packed in 1ltr or 2lts bottle it is classifiable as coconut oil. This means that coconut oil will change its composition if packed in small sachets. This is not the correct way to justify a classification. The contention of the revenue is that coconut oil in small sachets can be used only as hair oil and not cooking oil. There are many people in the society who use very small amount of oil for their day to day consumption and some of them also by ration on a daily basis. When common parlance can be used to classify a product which is under confusion, why can't it be used to justify its right classification? The reason why 100% coconut oil should not be classified under a different heading based on the quantity of packaging is because:

1. It does not lose its composition when packed in a smaller pack (this is a rebut to argument based on Rule 3(b) of Rules of General Interpretation)
2. It can be used for cooking which makes it multi-purpose product. Thus it is more accurate if it is classified under its own heading rather than that of one of its purpose

3. Common Parlance states that when there is confusion as to the classification of a product, the majority usage style of the customers determines its actual use and thus leading to its classification. There is no confusion in classification. Due to the amendment of the act, there is a separate heading just for the products of coconut oil and for coconut oil itself. When there is a separate heading with no confusions, why is the revenue forcefully classifying it under a different heading which is giving rise to confusion?

The reason to do so is that the tariff rates for products which are classified under Chapter 33 is 16% whereas the tariff rates for products under Chapter 15 is 8%. In the beginning of this chapter, a statement was made stating that the main objective of the act is to raise revenue. That is the sole reason why this confusion is being created. The larger percentage of duty is the reason. This is a speculation, but an educated one.

Conclusion

The main objective of the central excise is to raise revenue. This does not give anyone the authority to exploit others. Coconut oil, even though used as hair oil by many, is still considered coconut oil. There is also no confusion in its classification as it was present before the amendment. There is no reason why coconut oil be classified as hair oil just because of lesser quantity. In the present case, Justice Gogoi held against the Plaintiff and upheld the Tribunal's decision to classify coconut oil under the same heading even for smaller packets whereas Justice Banumathi held in favour of the plaintiff as she based her reasoning on the Trade Parlance or Common Parlance test and the General Interpretation Rules. Thus due to the split decision, the matter has been referred to a higher bench.

The common parlance theory and the General Interpretation Rules are correct for the situations for which it was introduced for. It was introduced to reduce the trouble of finding the scientific and technical nomenclature so as to link the nomenclature to the chapters of the act. The linking of the nomenclature of coconut oil would have been difficult if there was no specific definition as to what it is. This problem was also taken care of by the amendment. But still confusion is created.

Thus there is a need for a specific set of rules and regulations so as to govern the nomenclature part of the process. The rules must specify as to what and how a product is to be classified. There is a need for such a regulation as without it there is already arbitrariness that is arising out of the situation, the arbitrariness and abuse of the act.