COMMISSIONER OF CENTRAL EXCISE, MEERUT

v.

M/S. MAHARSHI AYURVEDA CORPORATION LTD.

DECEMBER 7, 2005

[ASHOK BHAN AND C.K. THAKKER, JJ.]

Central Excise Tariff Act, 1985; Chapter Headings 2001.90 and 2107-2108.90; Notification No.2/94/Rules of Interpretation of Schedule I; Rule 3(a):

Classification—Harbonic Tonic—Tariff headings 2001.90 or 2107/2108.90—Held: Sub-heading 2108.90 covers other edible preparation not covered elsewhere as such residuary in nature—The product in question covered under specific entry 2001.90 since it is mixture of different vegetation which could be consumed as such—Thus exclusionary note under heading 20.08 of Chapter 20 of Harmonised system of Nomenclature not applicable—Since the product in question covered under specific entry under Chapter 20, resort cannot be made to the residuary entry under chapter 21—Hence, Tribunal rightly classified the product under Chapter 20 of the Act for levying excise duty.

The respondents/assessee manufacturer of Ayurvedic Medicament had filed a classification list in respect of the product "Herbonic" under sub-heading 2001.90 declaring the same to be a preparation of vegetables, nuts and other parts of plants and fruits/seeds claiming nil rate of duty under Notification No.2/94. According to the Revenue the product merits classification under sub-heading 2107.91 chargeable to duty at the rate of 20% *ad valorem*. Later, the product was reclassified by the Revenue under sub-heading 2108.90 and after issuing show cause notices to respondents confirmed the demand of differential amount of duty. Appellate authorities affirmed the Order. Aggrieved, assessee/respondents preferred appeals before the tribunal. Tribunal held the product "Herbonic" classifiable specifically under sub-heading 2001.90 as against entries in Chapter 21 which is a residuary general heading. Hence the present appeals.

Appellant-Revenue contended that since the expression used in the Tariff Act and HSN (Harmonised System of Nomenclature) is the same, the meaning

A which is expressly given in the HSN should be preferred in the absence of anything to the contrary given in the Central Excise Tariff Act; that because "Herbonic" is a mixture of vegetable origin and fruit origin raw material, the same gets specifically excluded from the provisions of Chapter 20.08 under HSN and therefore also from Chapter 20 of the Central Excise Tariff; that
B "Herbonic" which is claimed to be a tonic and does not have any therapeutic or prophylactic properties is specifically covered under Chapter heading 2106 of the HSN and Chapter heading 21.07 or Chapter heading 21.08 (depending on the period involved) of the Central Excise Tariff and that the correct classification of the produce "Herbonic" should be under Chapter 2107/2108.

C Respondents submitted that Chapter Note 1 of Chapter 20 of the Tariff Act is a specific entry which deals with preparation of vegetable, fruit or nuts where as Entry 21.08 in Chapter 21 is residuary. Since Chapter 20.01 is specific on such preparation the product should be covered by this description and qualifies for classification under Chapter heading 20.01; that Since the respondent's preparation is covered specifically by entries in Chapter 20, the
D same should be preferred to the residuary clause in Chapter 21 which is of general description.

Dismissing the appeals, the Court

HELD: 1.1. Since the product "Herbonic" is mixture of different vegetation it is rightly been classified by the Tribunal under Chapter 20 of
E the Central Excise Tariff Act. [545-C]

1.2. Sub-heading 2107.91/2108.90 of the Tariff Act covers other edible preparations not elsewhere specified and as such is residuary in nature. As per Rule 3 (a) of the rules of interpretation of Schedule-I, the heading which provides the specific description should be preferred to the heading providing
F a general description. Since in the present case the product is covered under specific entry under Chapter 20 resort cannot be made to the residuary entry. [545-E; 546-G]

Bharat Forge & Press Industries (P) Ltd. v. *Collector of Central Excise,*
G (1990) (45) E.L.T. 525; *Indian Metals & Ferro Alloys Ltd.* v. *Collector of Central Excise,* (1991) 51 E.L.T. 165; *Speedway Rubber Co.* v. *Commissioner of Central Excise, Chandigarh,* (2002) 143 E.L.T. 8 and *C.C. (General), New Delhi* v. *Gujarat Perstorp Electronics Ltd.,* (2005) 186 E.L.T. 532, relied on.

1.3. The exclusionary note in HSN of Entry 20.08 of Chapter 20 of HSN
H is not applicable because it excludes the products consisting of mixture of

plants or parts of plants (including seeds and fruits) of different species or consisting of plants or parts of plants *which are not consumed as such* but which are of a kind used for making herbal infusions or herbal "teas". In the present case the mixture prepared is of parts of plants, seeds and nuts which can be consumed as such. It would therefore be not applicable. Entry 14 of Chapter 2106.90 would also be not applicable since the product would be governed by Chapter 20 and not by chapter 21 of the Tariff Act. Entry 14 is a part of Chapter 21 of HSN which corresponds to Chapter 21 of Tariff Act which is not applicable to the present case. Hence, the Tribunal is right in holding that the product of the respondents is covered by Chapter 20 and not Chapter 21 of the Tariff Act. [546-H; 547-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4369-4370 of 2000.

From the Judgment and Order dated 18.11.99 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in F.O. Nos. 1009-1010/99-C in A. Nos. E/3070-71 of 1998-C.

WITH

C.A. No. 6774 of 2001.

Mohan Prasaran, Additional Solicitor General, Manish Tiwari, Vivek Sood, Gaurav Dhingra, Nitesh Rana, Chidananda D.L., K.K. Senthilvelan and P. Parmeswaran for the Appellant.

Manoj Arora, Ms. Hemantika Wahi and Ms. Sadhna Sandhu for the Respondent.

The Judgment of the Court was delivered by

BHAN, J. These appeals have been filed by the Commissioner of Central Excise, Meerut (for short "the appellants") under Section 35 L (B) of the Central Excise Act, 1944 (for short "the Act") against the judgment and final order No.1009-1010/99-C dated 18.11.1999 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short "the Tribunal") in appeal No.E/3070-71/98-C by which the Tribunal has set aside the order passed by the Commissioner (Appeals) and allowed the appeals filed by M/s. Maharshi Ayurveda Corporation Limited, respondents herein, holding that the product "Herbonic" tonic falls under Chapter heading 2001.90 and

A not under Chapter heading 2108.90.

The issue involved in these cases is whether the product "Herbonic" tonic is classifiable under Central Excise Tariff Heading No.2001.90 or 2108.90. The Tribunal classified the product under Chapter heading 2001.90.

B *FACTS*

Respondents are engaged in the manufacturing of P.P. Ayurvedic Medicaments falling under Chapter heading 3003.30 of the Schedule to the Central Excise Tariff Act, 1985 (for short "the Tariff Act"). The respondents had filed a classification list effective from 25.4.1994 for the product "Herbonic"
C put up ordinarily for sale in unit containers under sub-heading 2001.90 declaring the same to be a preparation of vegetables, nuts and other parts of plants and fruits/seeds claiming nil rate of duty under notification no.2/94 dated 1.3.1994 whereas as per appellants the product is a mixture of assorted vegetables and dry fruits or seeds and is a health vitalizer being used for all round growth
D and improvement of memory and general health of children and adults and the product merits classification under sub-heading 2107.91 chargeable to duty at the rate of 20% *ad valorem*. After the Budget of the year 1995-96 the product was reclassified under sub-heading 2108.90. Appellant issued show cause notices no. C. No. V[30]3/49/96/Div.IV/3405, C. No. V[30]3/106/Div.IV/6332 dated 26.6.1994, C. No. V[3000]/3/40/95-D-IV/677 dated 27.1.1995, C. No.
E V[30]3/94/95/D-IV/1198 dated 20.2.1995, C No. V[21]3/323/95/D-IV/6009 dated 16.11.1995 and C. No. V[30]3/32/95/D-IV/6569 dated 26.12.1995 to the respondents covering duty demand for different periods of Rs.3,45,340.55.

Assistant Commissioner confirmed the demand vide order in original no.251/D/96 dated 15.10.1996 and also imposed a penalty of Rs. 10,000/- on
F the respondents. In other cases of the respondents in respect of classification of the same product, the Assistant Commissioner also confirmed the demand of Rs.1,42,946.00 (Rs.68,078.20 + 74,867.80) and also imposed a penalty of Rs.7,000/- on the respondents vide order in original no.269-270/D/96 dated 18.11.96.

G

Aggrieved by the orders of the Assistant Commissioner, respondents filed appeals before the Commissioner (Appeals). The Commissioner (A) considered the HSN and the Central Excise Tariff thoroughly and adjudicated that the product "Herbonic" is classifiable under Chapter 21 (2107.91/2108.90). The Commissioner (A) thus confirmed the order in original passed by the
H Assistant Commissioner.

Aggrieved by the order in appeal passed by the Commissioner (A), the respondents filed appeals before the Tribunal. The Tribunal after scrutinizing the submissions made by the parties held that the product "Herbonic" is classifiable under sub-heading 2001.90 being specific as against entries in Chapter 21 which is a residuary general heading. The product in question cannot be classified under a general heading when it can be classified under a specific heading as according to Rule 3(a) of the rules of interpretation of Schedule-I, "The heading which provides the most specific description shall be preferred to headings providing a more general description."

Aggrieved against the order passed by the Tribunal, the present appeals have been filed. Counsels for the parties have been heard.

Relevant entries of Tariff Act and HSN are Entry 20.01 under Chapter 20 reads as under:-

Heading No.	Sub-heading No.	Description of goods	Rate of Duty
(1)	(2)	(3)	(4)
20.01		Preparations of vegetables, fruits, nuts or other parts of plants including jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, fruit juices and vegetable juices, whether or not containing added sugar or other sweetening matter	
	2001.10	Put up in unit containers and bearing a brand name	16%
	2001.90	Other	Nil

Entry 21.08 under Chapter 21 which deals with miscellaneous edible preparations reads as under:-

Heading No.	Sub-heading No.	Description of goods	Rate of Duty
(1)	(2)	(3)	(4)
21.08		Edible preparations, not elsewhere specified or included	
	2108.10	- Preparations for Lemonades or other Beverages intended for	16%

	use in the manufacture of Aerated Water	
2108.20	- Sharbat	16%
2108.30	- Prasad or Prasadam	Nil
2108.40	- Sterilised or Pasteurised Miltone	Nil
	- Other:	
2108.91	- Not bearing a brand name	Nil
2108.99	- Other	16%

Entries of Chapter 20 of harmonized commodity description and coding system (Harmonized System of Nomenclature called "HSN") dealing with the preparation of vegetables, fruits, nuts or other parts of plants which corresponds to Chapter 20.08 of the Tariff Act reads as under:-

"20.08	- Fruit, Nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.
2008.99	- Other

"Exclusionary Clause

"And it excludes products consisting of a mixture of plants or parts of plants (including seeds or fruits) of different species or consisting of plants or parts of plants (including seeds or fruits) of a single or of different species mixed with other substances such as one or more plant extracts, *which are not consumed as such, but which are of a kind used for making herbal infusions or herbal "teas"* (e.g., heading 08.13, 09.09 or 21.06)."

Chapter 21 of HSN which deals with miscellaneous edible preparations and which corresponds to Chapter 21 of Tariff Act the relevant entry of 2106.10 reads as under:-

"21.06	- Food preparations not elsewhere specified or included.
2106.10	- Protein concentrates and textured protein substances."

It is further provided the heading includes, *inter alia*:

"(1) to (13) xxx xxx

(14) Products consisting of a mixture of plants or parts of plants (including seeds or fruits) of different species or consisting of plants or parts of plants (including seeds or fruits) of a single or of different species mixed with other substances such as one or more plant extracts, which are not consumed as such, but which are of a kind used for making\herbal infusions or herbal "teas", including products which are claimed to offer relief from ailments or contribute to general health and well-being."

SUBMISSIONS

Mr. Mohan Parasaran, learned Additional Solicitor General of India submits that the heading under Chapter 20 in the Central Excise Tariff have been compressed and there is only one chapter heading 2001 to 2009, accordingly a reference to the chapter headings of HSN gives clearer picture of the items intended to be covered under this chapter. In the HAS, 20.08 is the only chapter heading which can cover the products of "Herbonic". However, this chapter contains a specific exclusion of products consisting of mixtures of plants and parts of plants of different species etc. The structure of central excise tariff in the Central Excise Tariff Act, 1985 is the adoption of a detailed central excise tariff based broadly on the system of classification derived from the International Convention called the 'Brussels' Convention on the Harmonised Commodity Description and Coding System (Harmonised System of Nomenclature called "HSN") with the necessary modifications. If the expression used in the Tariff Act and HSN is the same then the meaning which is expressly given in the HSN should be preferred in the absence of anything to the contrary given in the Tariff Act. For this he has relied upon the judgment of this Court in *Collector of Central Excise, Shillong* v. *Wood Craft Products Ltd.*, (1995) 77 E.L.T. 23 in which it has been observed:-

"12. It is significant, as expressly stated, in the Statement of Objects and Reasons, that the Central Excise Tariffs are based on the HSN and the internationally accepted nomenclature was taken\into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the *HSN is a safe guide for ascertaining*

A *the true meaning of any expression used in the Act.* The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the B meaning of that term given in the Glossary of Terms of the ISI."

It is further observed in para 18:

"..... Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, C as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention."

It was further contended that because "Herbonic" is a mixture of vegetable origin and fruit origin raw material, the same gets specifically D excluded from the provisions of Chapter 20.08 under HSN and therefore also from Chapter 20 of the Central Excise Tariff. Chapter heading 21.06 of HSN at Sl. No.14, specifically covers mixture of plants or parts of plants of different species with special reference to the product, which contributes to general health and well being. "Herbonic" which is claimed to be a tonic and does E not have any therapeutic or prophylactic properties is specifically covered under Chapter heading 2106 of the HSN and Chapter heading 21.07 or Chapter heading 21.08 (depending on the period involved) of the Central Excise Tariff. According to him the correct classification of the produce "Herbonic" should be under Chapter 2107/2108.

F As against this, learned counsel for the respondents contends that Chapter Note 1 of Chapter 20 is a specific entry which deals with preparation of vegetable, fruit or nuts where as Entry 21.08 in Chapter 21 is residuary. Since Chapter 20.01 is specific on such preparation the product should be covered by this description and qualifies for classification under Chapter G heading 20.01. As per Rule 3(a) of the rules of interpretation of Schedule-I, "The heading which provides the most specific description shall be preferred to headings providing a more general description." Since the respondent's preparation is covered by entries in Chapter 20, the same should be preferred to the residuary clause in Chapter 21 which is of general description. Relying upon the judgments of this Court in *Bharat Forge & Press Industries (P) Ltd.* H v. *Collector of Central Excise,* (1990) 45 E.L.T. 525, *Indian Metals & Ferro*

Alloys Ltd. v. *Collector of Central Excise,* (1991) (51) E.L.T. 165, *Speedway Rubber Co.* v. *Commissioner of Central Excise, Chandigarh,* (2002) 143 E.L.T. 8 and *C.C. (General), New Delhi* v. *Gujarat Perstorp Electronics Ltd.,* (2005) 186 E.L.T. 532, it was contended that the Heading Note which is more specific should be preferred to the residuary clause.

FINDINGS

The product under reference is a mixture of assorted vegetation and dry fruits and seeds. That different vegetations namely Khas Khas, Aswagandha & Brahmi Booti is turned into powder and processed in Khas Khas and giri badam (almond) oil and then the whole mixture is processed in sugar syrup under vacuum and thereafter choti illayachii (cardamom) and root kewara are added as flavour. Since the product "Herbonic" is mixture of different vegetation it is rightly been classified by the Tribunal under Chapter 20. In Chapter 21 there is an entry reading as "Edible preparations, not elsewhere specified or included" under the particular heading "Miscellaneous Edible Preparations". Chapter Note 9(a) of the Chapter 21 reads "Heading No. 21.08, *inter alia* includes: [a] protein concentrates and textured protein substances; [b] preparations of use, either directly or after processing (such as cooking; dissolving or boiling in water, milk or other liquids), for human consumption". Sub-heading 2107.91/2108.90 covers other edible preparations not elsewhere specified and as such is residuary in nature. As per Rule 3 (a) of the rules of interpretation of Schedule-I, the heading which provides the specific description should be preferred to the heading providing a general description.

In *Bharat Forge & Press Industries (P) Ltd.,* (supra) a three Judge Bench of this Court held that if a product cannot be brought under the specific entries in the tariff Act only then resort can be made to a residuary entry. It was held in para 3 as under:-

> "3. The question before us is whether the Department is right in claiming that the items in question are dutiable under tariff entry No. 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item."

A To the same effect is the judgment in *Indian Metals & Ferro Alloys Ltd.*, (supra), it was observed in para 16 as under:-

> "16. One more aspect of the issue should be adverted to before we conclude. The, assessee is relying upon a specific entry in the tariff schedule while the department seeks to bring the goods to charge
B under the residuary Item No. 68. It is a settled principle that unless the department can establish that the goods in question can, by no conceivable process of reasoning, be brought under any of the specific items mentioned in the tariff, resort cannot be had to the residuary item : See the *Bharat Forge* case (supra). This certainly is not the
C position in this case, particularly in the light of the department's own understanding and interpretation of Item 26AA."

In *Speedway Rubber Co.*, (supra) this Court observed in para 23 as under:-

> D "23. We may notice that as per Rule 3(a) of the Interpretation Rules to Central Excise Tariff Act, 1985, "The heading which provides the most specific description shall be preferred to headings providing a more general description."

In *C.C. (General), New Delhi* (supra) it was observed in para 57 as
E under:-

> "57. There is still one more aspect which is relevant. It cannot be disputed and is not disputed before us and is also concluded by a decision of a three Judge Bench in *Associated Cement Co. Ltd.* that the basic heading is 49.01. It deals with "Printed books, brochures,
F leaflets and similar printed matter, whether or not in single sheets". 49.11 covers "Other printed matter, including printed pictures and photographs". Thus, specific or basic heading is 49.01 and residual entry is 49.11. Priority, therefore, has to be given to the main entry and not the residual entry. According to the Company, the case is covered by the main entry under 49.01, and in that view of the matter, one
G cannot consider the residual entry 49.11."

Since in the present case the product is covered under specific entry under Chapter 20 resort cannot be made to the residuary entry.

The exclusionary note in HSN of Entry 20.08 of Chapter 20 of HSN is
H not applicable because it excludes the products consisting of mixture of

plants or parts of plants (including seeds and fruits) of different species or consisting of piants or parts of plants *which are not consumed as such* but which are of a kind used for making herbal infusions or herbal "teas". In the present case the mixture prepared is of parts of plants, seeds and nuts which can be consumed as such. It would therefore be not applicable. Entry 14 of Chapter 2106.90 produced above would also be not applicable since in this case we are holding that the present case would be governed by Chapter 20 of the Tariff Act and not Chapter 21 of the Tariff Act. The Entry 14 referred to above is a part of Chapter 21 of HSN which corresponds to Chapter 21 of Tariff Act which is not applicable to the present case.

In conclusion, we hold that the Tribunal is right in holding that the product of the respondents is covered by Chapter 20 of the Tariff Act and not Chapter 21 of the Tariff Act.

For the reasons stated above, we do not find any merit in these appeals and dismiss the same with no order as to costs.

S.K.S. Appeals dismissed.