

CLASSIFICATION OF GOODS

Question 1

ABC Company Ltd. had imported brine shrimp eggs. This was classified as "prawn feed" for customs duty purposes under chapter heading No. 2309 of the Customs Tariff schedule which includes use as animal feed. The Department's view was that this should be classified under chapter heading No. 051199 as non-edible animal products unfit for human consumption. ABC Company Ltd. provided literature to support their contention that the imported material contained little organisms/embryos which later became larva that were fed to the prawns. Therefore, according to the importers, the nature and character of the product was not changed or altered by nurturing or incubation. Hence, the classification should be as prawn feed under chapter heading No. 2309.

Decide with the help of case law, if any, whether the contention of the assessee, ABC Company Ltd. is correct in law. (5 Marks) (May 2011)

Answer

Yes, the contention of the assessee is justified in law. The facts of the given case are similar to the case of *Atherton Engineering Co. Pvt. Ltd. v. UOI* 2010 (256) ELT 358 (Cal.). The Court noted that it was the use of the product that had to be considered in the instant case. If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification. Therefore, in the instant case, it examined whether the nature and character of the product remained the same.

The Court opined that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. The larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg.

Hence, the Court held that the said product should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation.

Question 2

Write a brief note with specific reference to rule 1 of the Rules of Interpretation of the First Schedule to Customs Tariff Act, 1975.
(4 Marks) (Nov 2010)

Answer

Rule 1 of the general rules for interpretation states that the titles of sections, chapters and sub-chapters in the First Schedule to the Customs Tariff Act, 1975 are provided for ease of reference only. For legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and provided such headings or chapter notes do not otherwise require, according to the subsequent rules.