GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL BENCH-II, KARACHI
3rd FLOOR JAMIL CHAMBER, SADDAR, KARACHI

Before: Mr. Ghulam Ahmed Member (Technical-II)

Customs Appeal No.K-550 of 2012

M/s. Zenith Chemical Industrial (Pvt) Ltd,
(NTN No.3257965),
16-KM, Off Ferozepur Road,
Behind WAPDA Gird Station,
1 KM Chandra Road,
Lahore ..... Appellant

Vs

1. The Additional Collector of Customs,
MCC-PaCCS),
Custom House,
Karachi. ..... Respondent

Mr. Mohammad Saleem Abbasi (Consultant) for the Appellant
Mr. Ghulam Yasin (Appraising Officer) for the Respondent

Date of Hearing: 12.03.2013
Date of Order: 25.03.2013

ORDER

MR. GHULAM AHMED, MEMBER (TECHNICAL-II). By this order, I intend to dispose off Customs Appeal No. K-550/2012 filed by the appellant against Order-in-Original No.126/2012 dated 30.09.2012, passed by the Collector of Customs Appeals Karachi.

2. Brief facts of the case are that Deputy Collector of Customs (Group-II), Model Customs Collectorate of PaCCS, Karachi reported vide Para No.12 of file No.2(8)Gr-II/Assessment/2012-PaCCS that M/s Zenith Chemical Industrial

(Pvt.) Limited (NTN No.3257965), (hereinafter called as the Appellant) 16-KM, Off Ferozepur Road, Behind WAPDA Grid Station, 1-KM Chandra Road, Lahore, electronically filed a GD bearing CRN No.I-HC-1955499 dated 20.09.2011, and declared to contain "Pharmaceutical Raw Material, 2-(4-Isobutylphenyl) Propionic Acid", weighting 9000Kgs, under HS Code 2916.3990. The importer determined his liability of payment of applicable duty and taxes, and sought clearance under Section 79(1) of the Customs Act, 1969. The under reference GD was selected for scrutiny in terms of Section 80 of the Customs Act, 1969. Scrutiny of the GD by the learned Respondent allegedly revealed that the Appellant had mis-declared the description and classification of the goods and declared the goods as "Pharmaceutical Raw Material, 2-(4-Isobutylphenyl) Propionic Acid", weighting 9000Kgs, under HS Code 2916.3990, and got them cleared under exemption/benefits of concessionary rate of custom duty @ 5.75% and sales tax @ 0% vide SRO 659(I)/2007 (table-II) & SRO 551(I)/2008 (Sr. No.11) respectively.

3. The Respondent asserted that the Appellant had declared the description 2-(4 Isobutyl Phenyl) Propionic Acid which was the chemical name of IBUPROFEN, correctly classified under HS Code 2916.3910, and chargeable to customs duty @ 15.95% (goods under FTA regime) vide SRO 659(I)/2007 and Sales Tax @ 19%. From the aforesaid facts the Respondent arrived at the conclusion that the Appellant allegedly deliberately concealed the actual contents of the GD and has misdeclared in terms description and classification in order to evade the taxes, willfully and with *mala-fide* intention, and attempted to defraud the government from its legitimate revenue amounting to rs.2,547,760/- and value of the offending goods is to the tune of Rs7,671,744/-. Accordingly, the Appellant were called upon to show cause under provision of Section 32(1), 32(2), 32A of the Customs Act, 1969, Section 3, 6, 7, 11(2), 26, 34, and 36(2) of the Sales Tax Act, 1990, and section 148 of the Income Tax Ordinance, 2001, as to why the evaded/short paid amount of government revenue amounting to Rs2547760/- (custom duty Rs7,83,285/-, sales tax

Rs16,90,269/-, and income tax Rs74,206/-) may not be recovered, and penal action may not be taken against them under clauses 14 and 14A of section 156(1) of the Customs Act, 1969, section 33 of the Sales Tax Act, 1990, and section 148 of the Income Tax Ordinance, 2001.

4. The Appellant being aggrieved with the approach of Respondent for issues like (i) classification of IBUPROFEN (ii) the difference between 2-(4-Isobutylphenyl) Propionic Acid and IBUPROFEN (iii) scope of semi-basic manufacturing within confines of Drug Act & Drug Rules 1976 in context of IBUPROFEN (iv) semi-manufacturing led purification of impure salt, its crystallization in specific solvent and collecting yield of desired enantiomorphic proportion of drug instead of recimic mixture, preferred Appeal under Section 194-A of the Customs Act, 1969, against Order-in-Original No.126/2012 (Manual-01 Case) dated 30.09.2012 passed by the Respondent. The Appellant contented that:-

(i) The impugned imported salt 2-(4 Isobutyl Phenyl) Propionic Acid PCT 2913.3990 differs from the finished IBUPROFEN PCT 2916.3910 in various aspects. The impugned salt is just organic salt covered under PCT 2916.3990 within description of "others", whereas the finished drug needs to have specific BP or USP grade, desired crystal size, with specific solubility. The salt and BP/USP grade finished drugs have different CAS number meaning thereby to have different characteristics. The IBUPROFEN has analgesic action. This analgesic action depends on nature of molecule and specifically the arrangement of atoms within molecule. The IBUPROFEN molecule could have different arrangement of atoms while having same molecular weight making its efficacy, absorption, time of give relief and total analgesic effect. Such isomers of IBUPROFEN which have same molecular formula but different arrangement of atoms within molecule are known as enantiomer. These enantiomer of

IBUPROFEN are S-isomers and R-isomers, however, the desired analgesic activity resides within S-isomers only. Therefore, if IBUPROFEN without raising the concentration of S-isomer is taken, it will take long time to convert R-isomer into S-isomer in the metabolic mechanism of the body and the pain relieving, fever decreasing action will be slow. But if 2-(-4Isobutylphenyl) Propionic Acid is treated properly in specific solvent, then S-isomers are converted into R-isomers, thus creating desired analgesic efficacy. In the manufacture of IBUPROFEN salt even prior to purification with specific solvent, development of nano-crystal, the yield of effective enantiomorph has to be increased with a view to increase efficacy. Therefore, impugned salt which is crude, lacks BP/USP grade, is not in specific crystalline form and does not have effective yield of desired enantiomorphs cannot attain the status of finished drug raw material. For simplicity every Acetyl Salisalic Acid salt is classifiable under PCT 2918.2210 but not all salts are used as Aspirin until their purity is brought to pharmaceutical grade, particle size is micro-fined or coated for time released particles to achieve desired level of efficacy. Hence, the impugned salt is 2-(4-Isobutylphenyl) Propionic Acid derivative and has to undergo many steps to attain status of pharmaceutical grade drug raw material.

(ii) The Appellant is licencee of semi-basic manufacturing of IBUPROFEN. The general scheme of manufacture involves the six steps to reach to crystal formation stage. The Appellant within confines of Drugs Rules, 1976, is entitled to do semi-basic manufacturing of IBUPROFEN, thus starting from a crude salt of 2-(4-Isobutylphenyl) Propionic Acid PCT 2916.3990 to produce IBUPROFEN PCT 2916.3910 by way of (i) treatment with proper solvent (ii) removal of impurities (iii) creation of desired

USP/BP grade (iv) production of desired level of crystals and (v) increasing efficacy by resolution of recimic mixture to produce desired enantiomorphic composition. All these steps involve sophisticated chemical treatment and are covered by semi-basic manufacturing process. Unlike aspirin and acetaminophen the arylpropionic acids are chiral and can exist in either of two enantiomeric forms. Because many of the materials of which biological systems are made are chiral and consist of only one mirror image, each enantiomer of any arylpropionic acid exhibits different biological effects. For this reason, some of these analgesics are sold as a single mirror image (the biologically active one). However, preparing these materials in one enantiomeric form is more expensive than making the racemic mixture. In some cases, conversion of the inactive enantiomer into the biologically active one (chemically referred to as an inversion) is known to occur in the body. In the case of 2-(4-Isobutylphenyl) Propionic Acid, only racemic versions are currently available in crude form of 2-(4-Isobutylphenyl) Propionic Acid, however, the desired analgesic and antipyretic activity is known to reside in only the (S) isomer. There is an advantage to using the (S) isomer; it is reported to be effective within 12 minutes, while the racemic mixture requires 36 minutes. A great deal of effort is needed by the Appellant to produce IBUPROFEN from 2-(4-Isobutylphenyl) Propionic Acid.

There are two basic ways to obtain nonracemic 2-(4-Isobutylphenyl) Propionic Acid either by resolution which is usually possible to separate the enantiomers of a racemic material. This is typically done by conversion of the compound to diastereomeric derivatives, followed by separation of the diastereomers (usually by re-crystallization) and regeneration of

the original compound. This process is referred to "resolution". The drawbacks are that the process is ti consuming (costly) and that half of the material lost being as the unwanted enantiomer. In some laboratories IBUPROFEN is made by Asymmetric Synthesis. This process gives a higher yield of the desired enantiomer and has the potential to be easier than a classical resolution but requires sophisticated infrastructure. The enantiomeric excess of a sample is calculated using following equation, and can be considered a measure of how much of a pure enantiomer is present in addition to the racemate.

$$\% \text{ ee} = \frac{\text{(\% major enantiomer - \% minor enantiomer)}}{\text{(\% major enantiomer + \% minor enantiomer)}}$$

(iv) Ibuprofen is a widely prescribed non-steroidal agent with anti-inflammatory, analgesic and antipyretic properties used to treat rheumatoid arthritis, osteoarthritis and mild to moderate pain. It is also used to reduce fever and relieve headaches, muscle aches, backache and aches from cold and the Appellant with a view to have maximum efficacy of drug within shortest possible time after administration applies the Resolution method which involve re-crystallization of 2-(4-Isobutylphenyl) Propionic Acid racemic mixture. The surface area of resulting active ingredient can be determined through the control of the particle size. Therefore, the bioavailability of the water insoluble drugs can be improved by reduction in their particle size (increase in surface area). In the pharmaceutical industry, also several conventional techniques have been utilized for particle size reduction such as crushing, grinding, milling, spray drying, freeze-drying. The Appellant resorts to these techniques to produce product IBUPROFEN with optimum particle size. IBUPROFEN nanoparticles were prepared by antisolvent precipitation method. For this technique,

introduction of the drug solution to the antisolvent generates high supersaturation. This results in fast nucleation rate and produces a large number of nuclei, which reduces the solute mass for subsequent growth. Submicron nanoparticles can thus be obtained provided that the growth of nucleating crystals can be arrested by the stabilizer (surfactant or polymer) through steric or electrostatic mechanism. For hydrophobic drugs like ibuprofen, water is most commonly used as the antisolvent. In terms of the solvent, it is beneficial if it can solubilize the drug in large amount and possesses a fast diffusion rate to the antisolvent water; while the stabilizer needs to have good affinity for drug particles and possess a fast diffusion rate and effective adsorption onto the drug particle surface in the water–solvent mixture. The Appellant being licencee of basic manufacturing of IBUPROFEN fulfills the conditions laid down under Rule 19 of Drugs Rules, 1976.

The Appellant adhered to the provisions of Drugs Act, 1976, Drug Rules 1976, and quality assurances given by him, therefore, has to convert 2-(4-Isobutylphenyl) Propionic Acid into (a) S-isomers (b) to produce crystals of desired micro-fined level (c) to ensure the following quality control tests:-

Test Items	Specifications	Methods
Characteristics	White crystalline powder	Visual inspection
Identification: A. IR B. UV C. HPLC	A. Sample IR spectrum corresponds to that of the standard	USP Method
	B. Sample UV spectrum does not differ from that of the standard by more than 3.0%	USP Method
	C. Retention time corresponds to that of the standard	USP Method
Melting Point (In-house)	75.0-77.5°C	USP Method

Loss on drying	Not more than 0.5%	USP Me
Heavy Metals	Not more than 0.002%	USP Method
Residual on Ignition	Not more than 0.5%	USP Method
Chromatographic Purity*	2-[3-(2-methylpropyl)phenyl]propanoic acid (EP Impurity A) : Not more than 0.15%	USP Method
	2-(4-methylphenyl)propanoic acid (EP Impurity D): Not more than 0.15%	
	2-(4-ethylphenyl)propanoic acid (EP Impurity N): Not more than 0.15%	
	2-(4-butylphenyl)propanoic acid (EP Impurity B): Not more than 0.1%	
	2-(4-propylphenyl)propanoic acid: Not more than 0.15%	
	Any unknown impurity: Not more than 0.05%	
	Total impurities: Not more than 0.6%	
4-Isobutylacetophenone	Not more than 0.1%	USP Method
Residual Solvents (Petroleum ether)	Not more than 250ppm	In-house Method
Assay (Dry Basis)	97.0% - 103.0%	USP Method

(vi) By the above quality control tests the Appellant ensures the production of IBUPROFEN by the Appellant with following traits:

Molecular Mass: 206.3

Molecular Formula: $C_{13}H_{18}O_2$

Chemical Name: 2-(4-isobutylphenyl) propionic acid

CAS NO.: 15687-27-1

Physical Property: White to off-white, crystalline powder, having a slight, characteristic

odor. Practically insoluble in water; very soluble in alcohol, in methanol, in acetone, and in chloroform; slightly soluble in ethyl acetate.

(vii) The Drugs (Licensing, Registering, and advertising) Rules allowed the Appellant a license for semi-basic manufacturing of the impugned IBUPROFEN "active pharmaceutical ingredient" under definition vide Article 2(a) of SRO 145(I)/76 dated February 12th, 1976, depicts as follows:

(a) **"Active pharmaceutical ingredient"** means a substance or a compound that is intended to be used in manufacture of a pharmaceutical product as a pharmacologically active compound (ingredient).

The Appellant is governed by the Drug Act, 1976, and above Drug Rules to produce "pharmacologically active compound" by way of semi-basic manufacturing. Now the question is whether [2-(4-Isobutylphenyl) Propionic Acid] imported by the Appellant is a pharmacologically active compound or not and whether any further process is required to make it pharmacologically active compound. The fact is that 2-(4-Isobutylphenyl) Propionic Acid (PCT 2916.3990) when imported is in crude form. Neither it is in form of desired enantiomer nor particle size is appropriate for absorption by the body in the normal metabolic process. The imported 2-(4-Isobutylphenyl) Propionic Acid needs to be purified, its conversion into S-enantiomer (isomer), re-crystallization for optimum particle size for absorption to produce desired antipyretic and analgesic action within shortest possible time. Therefore when 2-(4-Isobutylphenyl) Propionic Acid PCT 2916.3990 & IBUPROFEN PCT 2916.3910 are compared only the later is pharmacologically active compound with desired antipyretic and analgesic properties. And among the 2-(4-

Isobutylphenyl) Propionic Acid PCT 2916.3990 IBUPROFEN PCT 2916.3910 only the later has the qualities which cover it under pharmacologically active ingredient as defined under clause 2(a) of Drug Rules, 1976. Therefore the ingredient which is pharmacologically active shall be decided by the provisions of Drug Rules, 1976, and not by any SRO of customs or by First Schedule of the Customs Act, 1969.

(viii) The Appellant acted strictly according to provisions clause 2(t) of Drug Rules, 1976, which state that **"good manufacturing practices of pharmaceutical products"** means "good manufacturing practices for pharmaceutical products" means part of quality assurance which:-

(i) Ensure that products are consistently produced and controlled to the **quality standards appropriate to their intended use** are as required by the marketing authorization or product specification; and

(ii) **Diminish the risks, inherent in any pharmaceutical production,** including **contamination, cross contamination** and mix ups (confusion) that cannot be detected completely through the testing of final products.

Now if Appellant acted as per above provisions of Drug Rules, 1976, with a view to produce IBUPROFEN with desired antipyretic and analgesic properties in shortest possible time by converting 2-(4-Isobutylphenyl) Propionic Acid PCT 2916.3990 into S-enantiomer (isomer) with optimum size and USP grade then it may be appreciated that Appellant acted by Rules to produce a product of real pharmacologically active compound IBUPROFEN instead of condemning this effort.

(ix) That as regards responsibility of Appellant as "manufacturer" for production of IBUPROFEN by semi-basic manufacturing, that

has to be governed by the Rules. The Drug Rules, 1976, vide definition 2(z) reflects that "manufacturer" means a company that carries out a least one step of manufacture". Whereas Appellant carried out many steps (i) purification with new solvent (ii) resolution into S-enantiomer (iii) creation of optimum particle size by re-crystallization, pulverization, and finishing. Therefore, by all standards the Appellant qualified as "manufacturer" by way of semi-basic manufacturing. The Appellant carried the above cited operations for "semi-basic manufacturing" of IBUPROFEN from 2-(4-Isobutylphenyl) Propionic Acid PCT 2916.3990, and the same is covered well under the definition of "semi-basic manufacturing" as depicted vide clause 2(av) which states as:-

> ***"semi-basic manufacture" means manufacture from an intermediate substance of a drug to be used as a starting material for the formulation of a finished drug or to be used for repacking".***

Even the "repacking" is considered as "semi-basic manufacturing" whereas Appellant performed operation of (i) purification of 2-(4-Isobutylphenyl) Propionic Acid PCT 2916.3990 with new solvent (ii) Resolution of R-enantiomer into desired S-enantiomer for efficacy and pharmacologically active action (iii) conversion into optimum particle size for desired level of absorption in metabolic process. Therefore, Appellant is fully covered under definition of "semi-basic manufacturing of drugs".

(x) That the objection of learned Respondent that Appellant used 2-(4-Isobutylphenyl) Propionic Acid PCT 2916.3990 for semi-basic manufacture of IBUPROFEN is ill founded as Appellant can use "any" starting material "but excluding packing material" under clause 2(ay) of Drug Rules, 1976, therefore, objection of Respondent is void in the light of Drug Rules, 1976. Keeping in

view of the above facts and grounds the Appellant asserted he to be governed by the Drug Act, 1976, Drug Rules, 1976, read with the Customs Act, 1969, and its First Schedule and notification issued thereunder for fulfilling his responsibilities to produce IBUPROFEN which is a active pharmaceutical ingredient with desired pharmacological activity, desired purity level, desired particle size, desired enantiomer and his performance need not be judged by any other law except Drug Act, 1976, and the allied rules. Therefore Respondent had acted beyond his domain by ill conceived and illegal notions about the Appellant and impugned import.

5. The Respondent was represented by Appraising Officer (A.O) Mr. Yassen. He reiterated the contention of the department which is enumerated below:-

(i) The contention of Appellant does not carry weight as the imported item declared as "Pharmaceutical Raw Material, 2-(4-Isobutylphenyl) Propionic Acid", is basically a chemical/generic name for Ibuprofen rightly classifiable under HS Code 2916.3910.

(ii) The Chemical dictionary named Hawley's titled **Condensed Chemical Dictionary,** 14th Edition; at page No.600 describes ibuprofen as; *a white or almost white powder or crystals with a characteristic odour.*

(iii) Moreover, the SRO 659(I)/2007 dated 30.06.2007, mentions at serial no 317, against HS Code 2916.3910, description; ibuprofen, rate of Customs Duty 15.96% as indicated in table II.

(iv) The charges leveled in the Show Cause Notice stand established.

6. The Respondent was provided an opportunity to submit counter arguments in shape of memorandum of cross objections. But the Respondent did not availed this opportunity inspite of grant of ample time to him. Therefore, I am constrained to decide on basis of record and arguments put

forwarded by both side. I have carefully examined the record of the case, written as well as oral arguments forwarded by the rival sides. The whole case hinges upon three legal questions:

(i). What is the classification of impugned goods under HS/Pakistan Customs Tariff?

(ii). What is the difference between impugned goods 2-(4-Isobutylphenyl) Propionic Acid and Ibuprofen?

(iii). Whether semi-basic manufacturing takes place in the journey from 2-(4-Isobutylphenyl) Propionic Acid to IBUPROFEN

7. As regards to first question, it is fact that the 2-(4-Isobutylphenyl) Propionic Acid is an aromatic mono carboxylic acid classified under HS Code 2916.3900. This heading has been further sub divided in Pakistan Customs Tariff by three dash headings in the following manner:-

2916.3900 – Other
2916.3910 --- IBUPROFEN
2916.3920 --- Ingredients for pesticides
2916.3990 --- Other

The Explanatory Notes to HS relating to Chapter 29 and Chapter 30 of Harmonized Tariff, the relevant Chapter Notes depict that the impugned goods i.e. 2-(4-Isobutylphenyl) Propionic Acid cannot be used as IBUPROFEN because it is in crude form and needs certain processing to convert the chemical into IBUPROFEN as a finished pharmaceutical active ingredient. It may further be mentioned that PCT heading 2916.3910 specifically covers IBUPROFEN which could be used by the pharma industries without any processing. The impugned goods are off white powder having lumps and needs processing/manufacturing process for converting into pharma-raw-material of BP Grade specifications. In the scheme of HS Nomenclature if any subheading depicts only one product then that subheading would cater that product only. As the PCT 2916.3910 at --- level only covers IBUPROFEN then no other product can be classified there and such product will be classifiable under basket heading of "Other" reflected by 2916.3990 at --- level.

As regard to second question, it is felt the Respondent has failed to appreciate the difference between 2-(4-Isobutylphenyl) Propionic Acid and IBUPROFEN. Had they been same then why a separate tariff heading was created at (---) level i.e. 2916.3910. The following matrix reflects the difference:-

Characteristics	2-(4-Isobutylphenyl) Propionic Acid	IBUPROFEN
Purity	Impure, not USP or BP grade	Pure, USP or BP grade
Crystal size	Not suitable for absorption in body	Optimum crystal size with ability to get absorbed in the body
Antipyretic effect	No immediate antipyretic effect within hour.	Antipyretic effect within 12 minutes.
Analgesic effect	No immediate analgesic effect	Immediate analgesic effect.
Crystal structure	Racemic mixture of R & S enantiomer	Pure S-enantiomer which has antipyretic and analgesic properties
Pharmacologically active	No	Yes
Can be used as pharmaceutical active ingredient as per definition of Drug Rules.	No due to impurity, crystal size and molecular structure	Yes due to USP/BP grade, optimum crystal size and molecular structure of S-enantiomer of molecule
Research product	No	Yes by Boots company, on basis of 6 step Brown reaction.

Due to above differences in characteristics the 2-(4-Isobutylphenyl) Propionic Acid and IBUPROFEN are not the same product; therefore, they have been placed against different HS Code. The allegation that 2-(4-Isobutylphenyl) Propionic Acid and IBUPROFEN were same and therefore its classification would be 2916.3910 and benefit of FTA notification SRO 659(I)/2007 and benefit of SRO 551(I)/2008 were not admissible is not correct and ill conceived by the Respondent.

8. Further, the Appellant had sent an e-mail to his principal informing him that the Appellant were facing a problem with the Pakistan Customs Department who in turn responded that the goods covered by Bill of Lading No.YMLUZ320170072 were in crude form and also issued certificate in that respect. This shows that the chemical imported in the subject case is starting material for the manufacture of pharmaceutical active compound i.e. IBUPROFEN and the same cannot be used by any pharmaceutical industry as such. The impugned material therefore, would be appropriately classified under PCT Heading 2916.3990 under a three dash heading which is chargeable to statutory rate of customs duty 10%. However, by virtue of China FTA certificate the duty is chargeable @ 5.75%. The Appellant had claimed exemption of sales tax under notification SRO 551(I)/2008 vide Serial No.11 which was chargeable to sales tax @ 0% as the statutory rate of duty was 10%, therefore, the benefit of the impugned notification was correctly and lawfully available to the Appellant. It is therefore, concluded that the Appellant has not mis-declared the impugned goods and have not committed an offence under Section 32(1), (2), 3(a) of the Customs Act, 1969, and Section 36(2) of the Sales Tax Act, 1990. Therefore, charge of misdeclaration envisages in the Show Cause Notice and resulting adjudication order is not sustainable and therefore unlawful.

9 The consultant of Appellant has submitted that 2-(4-Isobutylphenyl) Propionic Acid and IBUPROFEN have same molecular weight and number of atoms in the structure but the arrangement of atoms within molecule is different which gives them different properties. This is neither strange nor new in organic chemistry as many compounds demonstrate different characteristics owing to spatial arrangement of atoms within molecule e.g. Glucose and Fructose both have formula $C_6H_{12}O_6$. The molecular weight of both is same but glucose depicts 50% sweetness as compared with sucrose (ordinary sugar) and is absorbed quickly by the metabolic mechanism of body whereas fructose demonstrates 200% sweetness as compared with sucrose and is absorbed in the

body very slowly. Therefore, both sweeteners are used for different purpose and have their own PCT Codes. From the above discussion it is clear that plea taken by the learned Respondent that 2-(4-Isobutylphenyl) Propionic Acid and IBUPROFEN are same is not tenable and is based on paucity of perception of organic chemistry and pharmacology. Therefore, 2-(4-Isobutylphenyl) Propionic Acid and research product of Boots IBUPROFEN are different products with different pharmacological action, hence, are classifiable in different HS Codes. Therefore, I am inclined to hold that the Appellant declared correct HS, and claimed the FTA concession legally without violating any customs laws. As regards to the third question framed at Para Supra, the perusal of chemical literature concerning transformation of 2-(4-Isobutylphenyl) Propionic Acid which is a crude chemical, into pharmaceutical grade product IBUPROFEN, about 5 steps are involved, which amply cover the said transformation under definition of "manufacturing", therefore, I hold that Appellant did not indulge into any misdeclaration on that account too. Keeping in view of above the impugned order is held unlawful and infested with legal and factual infirmities and therefore is set aside. The appeal is allowed as no order to cost.

10. Order passed accordingly.

(Ghulam Ahmed)
Member (Technical-II)
Karachi