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Collector of Central Excise Vs. Bengal Aromatics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-1996

Reported in : (1996)(88)ELT423TriDel

Appellant : Collector of Central Excise

Respondent : Bengal Aromatics

Judgement :

1. The point for determination in this appeal shortly is whether the products described as Naphthol AS, Naphthol ASBS and Naphthol ASG are classifiable Under Sub-heading 2903.10 as claimed by the respondents herein or under sub-heading 3204.29 as held by the Department.

2. The facts of the case are that the respondents herein are engaged in the manufacture of products described by them as Naphthol AS, Naphthol ASBS and Naphthol ASG. The respondents filed classification list and claimed assessment of these products under sub-heading 2903.10. The Asstt. Collector approved the classification list classifying the products under 3204.29. The respondents herein being aggrieved by this order of the Id. Asstt. Collector filed an appeal before the Collector (Appeals). The Collector (Appeals) set aside the order of the Asstt.

Collector and remanded the case to the A.C. for consideration afresh after observing the principles of natural justice. It was represented by the respondents herein that the goods in question were not colouring matter individually but was used in the manufacture of synthetic organic colouring matter by chemical reaction

with other organic components. The respondents herein relied upon a clarification given by the Board in their letter M.F.D.R./345/1/86-TRU, dated 25-2-1986 whereunder it was claimed that naphthol falls under sub-heading 2903.10 and not under Chapter 32.

3. The Asstt: Collector held that sample was drawn and the test report on the sample indicates that the products described by the respondents as naphthols are the phenols derived from naphthelene and therefore the product was different and therefore the Board's clarification shall not be applicable to the present products manufactured by the respondents herein. The Asstt. Collector, therefore, held that the products described by the respondents herein as Naphthol. AS, Naphthol ASBS and Naphthol ASG are classifiable under 3204.29.

4. Against this order of the Asstt. Collector, the respondents herein went in appeal before the Collector (Appeals). The Collector (Appeals) in his order held that Board's clarification cited and relied upon by the respondents herein clarifying that sub-heading No. 3204.29 covers synthetic organic colouring matter and since the products manufactured by the assessee is not colouring matter, therefore, they appropriately fall under sub-heading 2903.10. Against this order of the Collector (Appeals), the Collector, Central Excise has filed the present appeal.

5. Shri J.M. Sharma, the learned DR appearing for the appellants submits that the learned Collector (Appeals) relied on the respondents contention that their case was covered by the clarification given by the Board in their letter dated 25-2-1986; that the Id. Collector (Appeals) did not take into consideration the test report on the samples drawn as also on Note 2 of Chapter 32. He submitted that Chapter Note 2 of Chapter 32 as also the chemical test report on the samples clearly showed that the products described as Naphthol AS, Naphthol ASBS and Naphthol ASG were not actually naphthol and therefore, were not covered by the clarification given by the Board in their letter dated 25-2-1986. He therefore, submitted that the Asstt.

Collector held that the products were classifiable under sub-heading 3204.29 and therefore, prayed that the appeal may be allowed.

6. None appeared for the respondents. However, from the record we find that there is a request from the respondents herein to consider their case on merits.

7. In the instant case, we find that the Id. Collector (Appeals) did not take into consideration the chemical test report. He also did not take into consideration the Chapter Note 2 of Chapter 32. We also observe that the Collector (Appeals), in his order only relied upon the clarification given by the Board in their letter dated 25-2-1986.

8. We find that Chemical Examiner in his test report had opined that the product is synthetic organic derivative used in any dying process.

The Chapter Note 2 of Chapter 32 reads : "2. Heading Nos. 32.03, 32.04, 32.05 and 32.06 apply also to preparations based on colouring matters (including in the case of Heading No. 32.06, colouring pigment of Heading No. 25.05 or Chapter 28, metal flakes and metal powders), of a kind used for colouring any material or used as ingredients in the manufacture of colouring preparations. The heading do not apply, however, to pigments dispersed in non-aqueous media in liquid or paste form, of a kind used in the manufacture of paints, including enamels (Heading No. 32.12), or to other preparations of Heading Nos. 32.07, 32.08, 32.09, 32.10, 32.12, 32.13 or 32.15)." Reading the Chemical Examiner's test report with Note 2 of Chapter 32, we find that Heading No. 32.04 applies also to preparations based on colouring matters of a kind used for colouring any material or used as ingredients in the manufacture of colouring preparations. Admittedly, the products in dispute are used as ingredients in the manufacture of colouring preparations. This fact of use is also testified by the Chemical Examiner in his report wherein he has opined that the products were to be used in any dying process. In this view of the matter, we find that the products in dispute shall be classifiable under sub-heading 3204.29.

9. Let us also examine the clarification given by the Board. We find that clarification was given by the Board in respect of naphthol. We also observe that the Asstt. Collector, in his findings, held that the products in dispute are not naphthols and therefore, the clarification given by the Board was not applicable to the products in dispute.

10. Having regard to the above discussions, we hold that the products in dispute shall be classifiable under sub-heading 3204.29. In the result, the appeal is allowed and the impugned order is set aside.

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