G.E. Plastics India Ltd. Vs. Commissioner of C. Ex.

G.E. Plastics India Ltd. Vs. Commissioner of C. Ex.

SooperKanoon Citation : sooperkanoon.com/10340

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-08-1996

Reported in : (1997)(92)ELT592Tri(Mum.)bai

Appellant : G.E. Plastics India Ltd.

Respondent : Commissioner of C. Ex.

Judgement :
1. The appellant imported polyphenylene ether and polyphenylene oxide (PPE & PPO) and cleared through Bombay Customs. The goods have been brought into the factory and took Modvat credit on them. This was objected to by the department on the ground that the declaration under Rule 57G did not include this product and that PPO which was declared was different from this product. Following the issue of notice, the Commissioner has passed the impugned order confirming this view and ordering recovery of credit taken.

2. The Commissioner in his order declined to accept the contention of the assessee that there was no different between PPE & PPO and this was the argument taken by the departmental Representative.

The HSN explanatory notes and technical dictionaries indicate that the two products are the same. During the adjudication, the goods were tested and the Dy. Chief Chemist who was consulted has stated on 19-4-1995 that PPE & PPO are one and the same. The goods have been classified under Heading 3909.30 of the Central Excise Tariff for purpose of additional duty.

4. The reading of the materials produced, shows that PPE & PPO are not, in fact, the same product. The HSN explanatory notes indicate that PPE is a group of products, of which PPO is an important member. The Concise Encyclopaedia of Polymer Science and Engineering also confirms this position. The correct position, therefore, (sic.) be that while PPO is ether, not all ether can be considered to be PPO. When the Customs authorities themselves have considered that the commodity is classifiable as PPO under Heading 3909.30, the Central Excise Authorities would not take a different view about the nature of the product in the absence of any allegation. We, therefore, hold that the product conformed to the (sic.) and the credit was rightly taken.