Collector of C. Ex. Vs. Jenson and Nicholson (i) Ltd.

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SooperKanoon Citation : sooperkanoon.com/10947

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-19-1997

Reported in : (1998)(103)ELT150TriDel

Appellant : Collector of C. Ex.

Respondent : Jenson and Nicholson (i) Ltd.

Judgement :

1. These are two appeals filed by the Revenue against Order Nos. 132 to 133/Cal-II/84, dated 28-12-1984.

2. Today's date was fixed in the presence of the learned Counsel on the last occasion.

3. The matter was initially passed over and has been called once again, but none has appeared for the respondents. We have, therefore, perused the records and heard the learned DR.4. Learned DR stated that the respondents had brought duty paid aluminium paste and availed proforma credit under Rule 56A for use in the manufacture of finished excisable goods - 'aluminium paint' during the period Jan. 1984 to Feb. 1984 (in Appeal No. E/1175/85-C) and Nov.1983 to Dec. 1983 (in Appeal No. E/1174/85-C).

5. They were clearing this aluminium paint in the form of aluminium paste and medium for aluminium paint in dual container for being used as aluminium paint, on payment of excise duty on the paste under 14-I(1)(i) of CET and on medium

under 14-II(i) in respect of the product, aluminium paint, although it was a composite product.

Consequently, demand for differential duty was raised and the show cause notices were issued in the two cases for the relevant periods involved therein.

6. The Assistant Collector treated the whole item as a composite product and confirmed the demands. The Collector (Appeals), however, accepted the respondents appeal holding that the goods are not classifiable under 14-I(3)(iii) as they were not ready mixed paints.

7. It was, however, the Department's contention that the issue has already since been settled by the Tribunal's orders in the case of India Paint Colour and Varnish Co. Ltd. v. CCE, Calcutta reported in 1983 (13) E.L.T. 998 (Tribunal) holding that such dual containers amounted to a composite product classifiable as paints not otherwise specified under 14-1(5). Therefore, they would request that the order of the Collector (Appeals) maybe modified in the light of the order of the Tribunal.

8. We observe that while the Assistant Collector was right in treating it as a composite product, he had incorrectly applied Heading 14-I(3)(iii). The Collector (Appeals) is right to the extent of holding that the product in the dual container is not ready mixed paint classifiable under 14-I(3)(iii). However, the Department is correct in pointing out that the issue has already been settled by the Tribunal holding that the composite product (in the nature of two pack paints) is assessable under 14-1(5) vide its order in the case of India Paint Colour and Varnish Co. Ltd. supra.

9. In the case of India Paint Colour and Varnish Co. Ltd., supra, the product was a "Catalyst for Zinc Rich Prime". It was claimed that the product was a catalyst used in conjunction with an epoxy primer and the two are mixed together immediately before use as "Zinc Rich Epoxy Primer"; and the two i.e. primer base and the catalyst are cleared together in a two pack system; and, it was held that the composite unit was required to be assessed together as one product under 14-1(5) as it was meant to be used as one and actually used to. In view of the similarity of the situation, the ratio thereof would apply in the present case. Hence,

the orders of the lower authorities are modified in the light of the above observations and findings and subject to these observations, the Department's appeals claiming classification under 14-1(5) is accepted.