Commissioner of Central Excise Vs. Wood Polymers Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-14-1998

Reported in : (1998)(104)ELT508TriDel

Appellant : Commissioner of Central Excise

Respondent : Wood Polymers Ltd.

Judgement :
1. The delay in filing the supplementary appeal arising out of the common impugned order is condoned, having regard to the consistent practice in the Tribunal in such cases, noting that the original appeal has been filed within the statutory period of limitation.

2. We find that the issue which arises in these appeals is the excisability of chemical solutions used for impregnating paper and fabric by the respondents herein, who are engaged in the manufacture of paper based laminated decorative boards, paper and cotton fabric based insulating boards and cotton fabric based industrial laminated boards.

The respondents prepared two types of chemical solutions, one containing phenol and formaldehyde and the other containing melamine and formaldehyde. The lower appellate authority has accepted the contention of the respondents that the chemical solutions mentioned above are not dutiable because they are highly unsuitable and are not marketable. He has followed the ratio of the Hon'ble Supreme Court in case of Bhor Industries Ltd. reported in 1989 (40) E.L.T. 280

(S.C.).

3. We have heard Shri H.K. Jain, Learned SDR and Shri R. Sudhinder, learned Counsel and hold that the decision of the Supreme Court in the case of Moti Laminates reported in 1995 (76) E.L.T. 241 (S.C.) holding that phenol formaldehyde, an intermediate product produced by manufacturers of laminated sheets for captive consumption, having shelf life of 2 to 3 days and being capable of survival for up to 15 days under regulated or controlled temperature conditions, is not marketable and hence not goods and not dutiable, would apply squarely to the present case. The department has not been able to show that either type of chemical solutions whether phenol and formaldehyde or melamine and formaldehyde solution is capable of being marketed. Since marketability test which is essential for the purpose of holding an item to be leviable to duty has not been satisfied in these cases, we see no infirmity in the impugned order and accordingly, upheld the same and reject the appeals.