

Collector of Central Excise Vs. United Phosphorus Ltd.

Collector of Central Excise Vs. United Phosphorus Ltd.

SooperKanoon Citation : sooperkanoon.com/13892

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-20-1998

Reported in : (1998)(104)ELT564TriDel

Appellant : Collector of Central Excise

Respondent : United Phosphorus Ltd.

Judgement :

1. The issue involved in the appeal preferred by the Revenue is whether the benefit of Notification 43/88 is available to a product which is pesticide intermediate or not.
2. Shri A.K. Madan, learned SDR submitted that Notification No. 43/88, dated 1-3-1988 exempts products falling under Chapter 28 or 29 of the Schedule to the CETA if they are used in the manufacture of goods falling under sub-heading 3808.10 of the Tariff, the respondents are manufacturing phosphorous trichlorides which is used captively in the manufacture of trimethyl phosphite falling under Chapter 29 of the Central Excise Tariff. As trimethyl phosphite is not falling under sub-heading 3808.10, the benefit of Notification is not available to the respondents as the conditions of the Notification have not been satisfied.
3. Shri Prakash Shah, learned Advocate, submitted that trimethyl phosphite manufactured by them is being cleared following Chapter X procedure for manufacture of insecticides/pesticides falling under sub-heading 3808.10 and, therefore, it cannot be said that the final product manufactured does not fall under

sub-heading 3808.10 and accordingly the condition of the Notification has been satisfied.

Learned Advocate submitted that this matter has been decided in their favour in their own case by the Appellate Tribunal. He relied upon the decision in the case of CCE, Vadodara v. United Phosphorus Ltd. reported in 1996 (16) RLT 177. In that case the assessee was manufacturing white/yellow phosphorus which was being cleared to their other units following Chapter X procedure for the manufacture of pesticides/insecticides intermediates viz. phosphorus trichlorides. The Tribunal observed that the emergence of phosphorus trichloride is a technological necessity and that pesticides cannot emerge directly from phosphorus white. The intermediate item phosphorus trichloride has been removed under Chapter X procedure for the manufacture of pesticides, in terms of the Notification and hence the benefit cannot be denied to the assessee. The Notification cannot be read in such a manner as to make the Notification otiose. Learned Advocate also relied upon the decision in the case of CCE, Vadodara v. United Phosphorus Ltd. reported in 1998 (98) E.L.T. 387 (Tribunal) in which the Tribunal held that if the technical process involved is such that it requires conversion of white/yellow phosphorus into intermediates before the final product emerges, that cannot be, by itself, a ground for rejection of the claim in the absence of any such condition in the Notification. In any eventuality, in this particular case, not only the white/yellow phosphorus but the above three intermediate products are also mentioned in the Annexure and all the final products have been claimed to be pesticides/insecticides falling under Chapter 38.08. Finally he relied upon the Tribunal's Final Order No. 78/98-C, dated 24-2-1998 in their own case. In reply, Shri Madan contended that annexure to the Notification contains both the products phosphorous trichloride and trimethyl phosphite and it follows from this unit is not the technological necessity that phosphorous trichloride has to be first converted into trimethyl phosphite before it can be used for the manufacture of insecticides/pesticides. He also referred to the Tribunal's Final Order No. 78/98-C in which it was mentioned that the respondents were bringing in phosphorous trichloride from their unit at Vapi to be used as an intermediate product for manufacture of pesticides. In respect of the Tribunal's order reported in 1996 (16) RLT 177, he submitted that the basic dispute in that

case was whether the benefit of Notification was available to white/yellow phosphorus.

He finally contended that as the condition stipulated in the Notification has not been complied with, the benefit of the same cannot be extended to the respondents.

4. We have considered the submissions of both sides. Notification 43/88 provides exemption to the products mentioned in the annexure to the Notification if these are used in the manufacture of goods falling under sub-heading 3808.10. The Notification further provides that in case these products are used in any other place other than the factory of production, procedure contained in Chapter X of the Central Excise Rules has to be followed. It has not been disputed by the Revenue that trimethyl phosphite manufactured out of phosphorous trichloride has been removed under Chapter X procedure. We observe from the impugned order that there is no dispute that trimethyl phosphite is used in the manufacture of insecticides and pesticides. The Tribunal in the assessee's own case reported in 1998 (98) E.L.T. 387 (Tribunal) has allowed the benefit to the pesticide intermediates though it was classifiable under Chapter 29 as it was finally used in the manufacture of the products falling under sub-heading 3808.10. We are in agreement with the findings of the Commissioner (Appeals) to the effect that the denial of benefit of exemption to phosphorus trichloride when manufactured and used in tri-methyl phosphite would negate the very purpose of issue of Notification 43/88. The intention to provide exemption under the Notification is very clear that all the raw materials as specified in annexure to the Notification whether they are used directly or through intermediates in the manufacture of insecticides and pesticides are eligible for exemption. In view of these facts and circumstances, we do not find any reasons to interfere with the impugned order and accordingly, the appeal is rejected.