

thermoplast Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-29-1998

Reported in : (1999)(105)ELT171TriDel

Appellant : thermoplast

Respondent : Collector of Central Excise

Judgement :

1. The appellants herein are manufacturers inter alia of plastic thermoware articles insulated with rigid polyurethane foam arising as insulating material by the one shot process (in situ process). Vide letter dated 6-4-1988 they submitted that the rigid PU foam is not excisable in view of judicial pronouncements. The appellants were made to pay duty on this product in the light of Trade Notice 128/88 dated 6-9-1988. After the judgment of the Tribunal in the case of Milton Plastics (Final Order No. 655/90-C, dated 27-6-1990) the appellants once again submitted to the Department that the rigid PU foam was not excisable. In July 1991, the Classification List No. 1/88 approved by the Assistant Collector under which the appellant paid duty under protest on rigid PU foam was reviewed and the Assistant Collector was directed to file an application before the Collector of Central Excise (Appeals) to hold that the rigid PU foam is not "goods" within the meaning of the Excise Law and Modvat credit of duty paid on inputs availed for payment of duty on rigid PU foam is not admissible. On 8-8-1991, a show cause notice was issued by the Superintendent of Central Excise proposing recovery of Rs. 2,61,987.77 representing Modvat credit availed by the appellants of duty paid on inputs used in

the manufacture of rigid PU foam, alleging that since rigid PU foam is not excisable, Modvat credit is not admissible. The Collector of Central Excise (Appeals) allowed the appeal of the Revenue holding that the rigid PU foam arising by the in situ process is not excisable and also holding that Modvat credit could not be claimed on the inputs used in the manufacture of rigid PU foam. The appellants are aggrieved . by the latter finding.

2. Learned Counsel, Shri R. Sudhinder's submission is that the lower appellate authority has exceeded his jurisdiction in determining the issue of non-admissibility of Modvat credit since that is the subject matter of a separate show cause notice. He also submits that credit cannot be asked to be reversed, since the appellants were paying duty on the rigid PU foam during the relevant period under the directions of the Department. Learned SDR, Shri Satnam Singh supports the impugned order contending that once the rigid PU foam has been held to be non-excisable, the question of availing credit of duty paid on the inputs does not arise.

3. We have carefully considered the submissions of both sides. Since there is no dispute that a separate show cause notice has been issued on 8-8-1991 seeking reversal of the credit availed by the appellants of duty paid on inputs used in the manufacture of rigid PU foam which has been ultimately held to be non-excisable, this issue will have to be adjudicated in terms of that notice and no orders are required to be passed on this issue in the present proceedings.

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