

N.S. Corporation Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-10-1998

Reported in : (1998)(103)ELT509TriDel

Appellant : N.S. Corporation

Respondent : Collector of Central Excise

Judgement :

1. The appellants herein purchase of duty paid Ultrawhite RNI and dilute the same by addition of water, and clear the following products from their factory: Show cause notice was issued proposing classification of the above three products under CET sub-heading 3204.90 attracting duty @ 35% BED + 5% SED. The Assistant Collector held that the Ultrawhite RNI even when diluted with water does not undergo any chemical change and it remains the same, and therefore no new product emerges. He held that the products cleared by the appellants are dilute Ultrawhite RNI of varying concentration classifiable under CET sub-heading 3204.30 which covers "Synthetic Organic Products of a kind used as fluorescent brightening agent or as luminophores". He held that no duty was payable on the three products above-mentioned and hence vacated the demand raised in the show cause notice. Revenue filed an appeal to the Collector (Appeals) who took the view that the respondents had manufactured new products and hence he allowed the appeal of the revenue. Hence this appeal by the assesseees.

2. We have heard Shri M.P. Devnath, Id. Advocate and Shri Satnam Singh, SDR. We find that the Collector (Appeals) has not controverted the claim of the

appellants in the write-up about their products, that the three products in dispute are excellent fluorescent whitening agent for polyester fibre. However, he has been guided by the fact that the appellants products are known by names different from Ultrawhite RNI. He has also held that the bath ratio as given by the appellants is related to the quality of Polywhite NSR and the ratio does not depend upon the duty paid raw material viz. Ultrawhite RNI cleared under CET sub-heading 3204.30 and from this he has concluded that the character and use of the appellants products differ from the original duty paid raw material, namely, Ultrawhite RNI. No reason has been given by the lower authority on how the characteristics and use of the disputed products are in any way different from that of the original duty paid raw material. The appellants rely upon several decisions of the Tribunal which have held that mere dilution does not result in the emergence of a different or distinguish excisable commodity so as to give rise to duty liability. CCE, Bangalore v. Mallya Fine Chetn (Pvt.) Ltd., Bangalore (Final Order No. 1245/90-C, dated 13-11-1990) the Tribunal held that the process of mixing or dilution of food colours in bulk form cleared by suppliers after payment of duty under CET sub-heading 3204.90 and mixed with common salt or glaubers salt or potable water, does not amount to manufacture, since, no distinct commercially new product arises as a result of the addition of salt/water. The same view was taken by the Tribunal in the case of Bush Boake Allen (India) Ltd., by Final Order No. 1246/90-C, dated 13-11-1990. Revenue's appeals against these orders were dismissed by the Supreme Court as seen from the order dated 7-5-1991 in Civil Appeal No. 1847/91 [1991 (54) E.L.T.A25] and order dated 15-7-1991 in Civil Appeal No. 2618/91 [1991 (56) E.L.T. A178], respectively.

4. In the case of Jyoti Laboratories v. CCE, Cochin - 1994 (72) E.L.T.669 it was held by the Tribunal that Synthetic Organic dye (Ujala) which was a physical mixture of Acid Violet Dye Ranipal and Ultramarine Blue dissolved in boiling water was not a new product attracting sub-heading 3204.90. The above decisions of the Tribunal have been followed in the case of jayu Products v. CCE, Bombay - 1994 (73) E.L.T.158 wherein the Tribunal has held that the process of mixing or dilution of duty paid Ultramarine Blue with China Clay as a diluted Acid Dyes for preserving of parity and shade does not amount to manufacture.

5. In the present case also the admitted position is that the appellants dilute the duty paid Ultrawhite RNI purchased by them with water. In the absence of any material to establish that the characteristics and properties of the three products cleared by the appellants are different from those of the original raw material (it is relevant to point out that the products have not been chemically tested) the ratio of the above judgments would require to be followed.

Accordingly we follow the ratio of the above cited decisions, and hold that the process of dilution of Ultrawhite RNI does not amount to manufacture in the hand of the appellants, so as to give rise to any duty liability on the three products in question. We, therefore, set aside the impugned order and allow the appeal.

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