

Syndet and Chemical Industries Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-09-1998

Reported in : (1999)(108)ELT85TriDel

Appellant : Syndet and Chemical Industries

Respondent : Commr. of C. Ex.

Judgement :

1. This is an appeal against the Order passed by the Commissioner (Appeals), New Delhi on 15-7-1992.

2. Learned Advocate, Shri. A.R. Madhav Rao for the appellants stated that the appellants herein are engaged in the manufacture of detergent powder. The appellants are taking Modvat credit on the poly bags received by them. During the course of manufacture, especially during the filling of detergent powder in the bags, certain bags got damaged and rejected and they were no longer fit for use as bags. The appellants have cleared the rejected poly bags by claiming classification under sub-heading 3915.90 with full exemption under Notification No. 53/88-C.E.2.1. Ld. Counsel submitted that the Assistant Commissioner passed Order-in-Original by classifying the rejected bags under sub-heading 3923.90 and also held that Modvat credit to the extent of duty paid on such rejected bags should not be allowed. The Commissioner (Appeals) held that Modvat credit cannot be denied in the present case in view of special provisions of Rule 57D. However, the Commissioner also held that the classification of the rejected poly bags would be under Heading 39.23 and not 39.15. He pleaded that the defective

poly bags which arise during the course of manufacture of detergents, squarely satisfy the description of Heading 39.15. The HSN Explanatory Notes clearly state that the products of Heading 39.15 consist of broken or worn articles of plastics. The plastic bag is an article of plastic and the defective bags arising in the course of manufacture of detergents are worn articles of plastics which are clearly not usable for original purposes.

2.2. Further, the Central Board of Excise & Customs vide Circular No.25/90, dated 16-5-1990 clarified that defective plastic pouches which are not usable would merit classification under Heading 39.15. Hence the defective plastic/poly bags would fall under Heading 39.15 and not 39.23.

3. Learned JDR drew attention to the impugned Order and reiterated the view expressed by the Commissioner (Appeals). He emphasised that the Commissioner (Appeals) taking note of Chapter Note 1 of Chapter 39, has held that plastic for the purpose of tariff is clearly restricted to goods falling under Heading Nos. 39.01 to 39.04 which cover primary forms only; Any reference to waste, paring and scrap is to be interpreted in the light of the goods falling under those headings. In this connection, the sequence of Tariff Entries is also important. The type of goods involved is also important. The goods involved in the case-law cited by the appellants were of a different nature and type and the situation is different in the present case. The Explanatory Note in the H.S.N. below the Item 39.15 is also not applicable. He has also kept in view provisions of Interpretative Rules and observed that Rules 1, 2 and 3 do not cover the situation and therefore, Rule 4 applies. Hence Heading 3923.90 was more appropriate.

4. We have considered the above submissions. We observe that both sides have proceeded on wrong tracks. Once the admitted fact is that the poly bags in question were not manufactured by the appellants, but had been received from a manufacturing unit and were simply used by them for filling detergent powder and that certain bags got damaged and rejected in the process, they could not be treated as falling under Central Excise Net. In fact, the pleas, the premises and the actions of both the sides were misconceived ab initio, as there is no excise on mere use of the goods. In view of this position, there is no need to go into further

details or deal with the so-called classification issue. The impugned Orders are set aside as already announced in the open court.

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