

**Collector of Central Excise Vs. Ishwar Arts**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Oct-09-1998

**Reported in :** (2000)(117)ELT757TriDel

**Appellant :** Collector of Central Excise

**Respondent :** ishwar Arts

**Judgement :**

1. The Revenue has filed this appeal against the order-in-appeal dated 27-7-1992 passed by the C.C.E. (Appeals), Ahmedabad.
2. Ld. DR stated that respondents who are manufacturers of thermoware had filed C/List 6-9-1990 in respect of "Rigid PU Foam" used as insulation material and obtained by injecting chemical by INSITU process in thermoware showing it under sub-heading No. 3921.11 but claiming that the said product is non-excisable. The Asstt. Collector, C. Ex. did not agree and approved the said C/List subject to levy of duty under C.S.H. No. 3921.11. The Appellate Collector set aside the Asstt. Collector's order on the ground that the said rigid PU foam generated inside the thermowares is not marketed separately as 'goods'.
3. The Department's contention is that the assessee, in the process of manufacture of thermoware, utilises chemical like polyol & isocyanates both of which are unstable and which are injected into the cavity around the thermoware i.e. between the inner & outer layer of plastic vessels and after some time due to chemical reaction the said mixture gets hardened, producing rigid PU foam on

condensation thereby providing insulation against heat transfer. Thus manufacture of a new commodity takes place in-situ.

4(a). Appellate Collector has proceeded on the basis that insulating material 'manufactured' inside the thermoware cannot be said to be marketable but failed to appreciate that without insulating material the end product could not be used at all and the PU Foam gets manufactured and marketed along with the final product. Therefore, it is not correct to say that it was marketable at all.

4(b). Appellate Collector was also wrong in taking the view that the marketability of the insulating material in the form in dispute was not established and it was not dutiable. This reasoning of the Collector (Appeals) is contrary to the principle laid down by the Supreme Court, in the case of Ramlal Mansukhbai, 1978 (2) E.L.T. (J 389) where it was held that once goods are specified in the tariff, the marketability of the same is not relevant.

4(c). Appellate Collector failed to appreciate in true sense the principles laid down by the Supreme Court in the case of Bhor Industries, 1989 (40) E.L.T. 280. In the instant case, the fact of the manufacture 'in-situ' through one shot process is not disputed and, findings of the Appellate Collector about marketability are not correct. CEGAT's decision on which the Appellate Collector has relied has not been accepted by the Department and an appeal has been preferred before the Supreme Court.

5. Ld. Counsel stated that no new product comes into existence by injecting insulating material during the process of manufacture of plastic articles in question and it is the final product alone which is marketable (and not the material injected in the space between the two layers in the product).

6. This issue had come up earlier also and he would like to rely in this connection on the Tribunal's order upheld by the Hon'ble Supreme Court as reported in 1995 (80) E.L.T. A212.

7. We have considered the above submissions. We observe that the Ld.Counsel is correct and the issue is covered by the ratio of the Tribunal's order in the case of

Vikram Plastics passed on 29-12-1997 and Final Order No. 684/89, dated 21-11-1989 passed in the case of Eagle Flask Pvt. Ltd. An appeal against the Tribunal's order in the later case has since been dismissed by the Hon'ble Supreme Court as reported in 1995 (80) E.L.T. A212. Therefore, respectfully following the ratio thereof, we reject the Department's Appeal as already announced in the open Court. The cross-objection is also disposed of accordingly.

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