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Chemtech Industries Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-04-1983

Reported in : (1983)LC498DTri(Delhi)

Appellant : Chemtech Industries

Respondent : Collector of Customs

Judgement :

2. In this case, the appellants seek refund of countervailing duty paid by them on a consignment of zinc ash imported by them on 23-4-80 on the grounds that- (1) Zinc ash is not "goods" but only a process waste that arises incidentally in the course of manufacture of other zinc products (1977 E.L.T. J-199 S.C. and 1980 E.L.T. 146-Bom), (2) by virtue of exemption notification Nos. 134/65-C.E., 168/69-C.E. and 104/73-C.E. which, among themselves, cover the entire zinc generating sector in India, no one pays Central excise duty on zinc ash in India and, therefore, there is no question of charging any "countervailing" duty on the imported zinc ash, (3) if at all, "ashes" in item 26(1) of the Central Excise Tariff whi-g relates to unwrought zinc, would cover zinc ash arising only at unwrought stage, that is, the smelter stage and zinc ash arising during rolling etc. process would be free of duty, and (4) because of the Bombay Custom House Public Notice dated 3-11-81 classifying zinc ash under item 68 C.E.T. for the period prior to 1-3-81, their zinc ash would be exempt from countervailing duty under notification No. 48/79-Customs and denial of the refund to them would be discriminatory.

3. We have carefully considered the matter. Item 26B C.E.T. relates to zinc and sub-item 1 thereof reads as under----------Item Tariff Description Rate of dutyNo.----------26B 1.Unwrought, including ingots, cakes, bars, blocks, Rs. 2,625 per hard or soft slabs, billets, plates, cathodes, anodes, metric tonne." pellets, spelter, dross, ashes and broken zinc.

It is evident from the above that whatever be the nature and character of zinc ash, the law makers have chosen to mention it by name as a taxable product in the Tariff. In such a situation, it is not permissible to bring in any argument which would frustrate the manifest legislative intention to tax this product. Such a situation did not exist in the two cases cited by the appellants-the Supreme Court judgment in refined vegetable oil case of M/s. Delhi Cloth & General Mills-1977 E.L.T. 199 and the Bombay High Court judgment in aluminium dross and skimmings case of M/s. Indian Aluminium Co. -1980 E.L.T. 146 (Bom). Therefore, no analogy can be drawn from these two judgments. Nor is the case of zinc ash unique in the Central Excise Tariff. There are other similar instances too. For example, item 18 covered Non-cellulosic wastes, all sorts specifically and item 26 specifically included steel melting scrap. It is, therefore, futile for the appellants to say that zinc ash is not goods and, therefore, cannot be charged to duty. Further, the very fact that they purchased a consignment of zinc ash after paying good money in foreign exchange for it and thought it worthwhile paying ocean freight, customs duties and inland freight thereon shows that it is a commodity bought and sold in the market and that it has commercial value and use. There is also no force in the argument that zinc ash cannot be called an article "produced or manufactured" in India so as to attract levy of countervailing duty on importation thereof under Section 3 of the Customs Tariff Act, 1975. The definition of 'manufacture' as given in Section 2(f) of the Central Excises and Salt Act, 1944 is an inclusive definition and is preceded by the words "unless there is anything repugnant in the subject or context" occurring in the main Section 2 ibid. When, therefore, the tariff specifically taxes a bye-product or a process waste, the subject or the context requires beyond doubt that the said product or waste should be

treated as goods manufactured or produced so as to attract the levy of central excise duty.

4. There is no force in the remaining arguments of the appellants either. The three central excise exemption notifications cited by them are all conditional ones. Notification No. 134/65-C.E. exempts zinc ash etc. provided it is produced from duty paid zinc and old scrap of zinc.

Notification No, 168/69-C.E. exempts zinc ash etc. provided it is recycled in the manufacture of zinc within the factory of production.

Notification No. 104/73-C.E. grants exemption only to such zinc ash as arises in the course of zinc smelting operations in zinc smelters.

Fulfilment of these conditions cannot be or has not been proved by the appellants in respect of the imported zinc ash. Further, these exemptions do not cover the entire zinc ash generating sector in India as claimed by the appellants. For example, if an integrated zinc unit producing primary metal as well as manufactures were to clear the quantity of zinc ash arising in its rolling etc section, it would have to pay duty thereon.

5. As regards the third argument of the appellants, zinc ash is zinc ash whether it arises at smelter stage or at rolling etc. stage. In name, character and use, the two ashes are no different. In either case they are used for extraction of the zinc metal contained in them and, therefore, both are classifiable as unwrought zinc only under sub-item 1 of the tariff. It would be incorrect to say that zinc ash arising at post-smelter stage becomes a zinc manufacture like sheet, circle or pipe.

6. So far as the grievance of discrimination based on Bombay Custom House Public Notice dated 3-11-81 is concerned, we can only say that in our view it would be wrong to consign zinc ash to the residuary item 68 of the tariff when item 26B(1) specifically covered it. It is for the Departmental authorities to remove the discrimination, if any, in their assessment practices.

7. To sum up, we hold that since zinc ash was specifically dutiable under item 26B(1) C.E.T., countervailing duty on the zinc ash imported by the appellants was

correctly charged and no refund of such duty is legally due to them.

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