Collector of Central Excise Vs. Intec Polymers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-06-1999

Reported in : (2000)LC432Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : intec Polymers

Judgement :

1. The issue involved in this Appeal filed by the Revenue is whether the product Insomar XLM-35 is classifiable under sub-heading 3208.10 as paint as claimed by the Revenue or under sub-heading 3208.40 of the Schedule to the Central Excise Tariff Act as claimed by the Respondents and ordered by the Collector (Appeals) in the impugned order.

2. Briefly stated the facts are that M/s. Intec Polymers Ltd., Respondents, manufacture Insomer XLM-35 and insulating Varnishes; that in their various classification lists, they classified Insomer XLM-35 under sub-heading No. 3208.40; that the Respondents, however, in their classification list No. 66/92-93 effective from 16-10-1992 claimed classification of the impugned product Insomer XLM-35 under sub-heading 3208.10 of CETA, describing the same as "Polyster Wire Enamel". As it was observed by the Department that both the products are same and earlier it was classified under sub-heading 3208.40, a show cause notice dated 1-2-1994 was issued to the Respondents to classify Insomer XLM 35 under sub-heading 3208.10 and why differential duty should not be recovered. The Assistant Collector, under Adjudication order dated 27-6-1994 classified the

impugned product under sub-heading 3208.10, holding that the raw materials used for the manufacture of the products were of similar kind and nature; that there could not be two classifications for the same product - one for export purposes and other for home consumption. The Assistant Commissioner mentioned, in adjudication order after going through the various literature produced by the Respondents, that it was evident that the product manufactured by them was known in the market as "wire Enamel based on Polyster" and nowhere it had been described as Varnish; that H.S.N. Explanatory notes distinguishes between paints (including Enamel) and Varnishes (including lacquers).

3. On Appeal filed by the Respondents, the Collector (Appeals) set aside the Adjudication order and classified the impugned product under sub-heading 3208.40, holding that there is a clear distinction between enamel and insulating varnish; that the enamel is a product consisting of pigments and varnish; it is based on synthetic polymers; they are more or less transparent or translucent, forming continuous film on the surfaces; that the Assistant Collector has accepted the fact that the impugned products are used for insulating wires; that according to Respondents, the product has been described as such in trade nomenclature; it is not enamel since it does not contain any paint or pigment; enamel has to be classified along with the paints because enamel is also a paint mixed with varnish to give a glossy finishing; that because of the use of varnish in the application of paint, it gives a particular smooth hard film for protecting or decorating surfaces; that, therefore, the paint or pigment in the enamel is a necessary constituent otherwise the product cannot be called enamel; that there is no evidence to show that the impugned products consist of pigments or paints along with varnish.

4. Shri H.K. Jain, ld. SDR, reiterated the findings contained in the Adjudication order passed by the Assistant Collector and emphasised that according to the literature given by the Respondents, the product has been described as wire enamel based on polyester and the product is also known in the market as wire enamel based on Polyester and not as varnish; that the product has to be classified in the manner in which it is known to the trade, as held by the Tribunal in Crystal Paints v.C.C.E. - 1991 (54) E.L.T. 249 and accordingly the impugned goods is wire enamel based on Polyester classifiable under sub-heading 3208.10

of C.E.T.A.5. Shri C.M. Korde, ld. Advocate, on behalf of the Respondents, submitted that their product consists of a solution of synthetic resins in solvents and is used to coat copper and aluminium wires; that the product is described under various trade nomenclatures in different countries; it is known as "wire enamel" or v insulating varnish' in India; as "electrical insulating material" in Bangladesh; as "wire enamel' in Vietnam and as "insulating varnish' in Nepal; that, however, regardless of the trade nomenclature adopted, the impugned product is technically known in the market as insulating varnish and is sold and bought for its capacity to form an insulating coating on wire and, therefore, the said product is not an ordinary varnish which may be used to form a protective or decorative coating on a surface; that varnish is described specifically in Dictionaries and Encyclopedia as not containing any insoluble pigment or colourant; that according to Hawley's Condensed Chemical Dictionary, varnish is "An organic protective coating similar to a paint except that it does not contain a colourant"; that Enamel is "A type of paint consisting of an intimate dispersion of pigments in a varnish or resin vehicle. The vehicle may be an oil-rich mixture or entirely synthentic resin." The ld. Advocate further submitted that enamel is ordinarily considered a paint which contains a pigment in a varnish medium and their product is obviously not an enamel within the meaning of definitions given in Dictionaries and Encyclopedia as it contains no pigment whatsoever and is not used as a paint. He also referred to certificates given by experts, his Customers and I.S.I. specification, specification issued by National Electrical Manufacturer's Association of the U.S.A. and by the International Electrical Technical Commission. He finally submitted that they received an export order from Russia and as the trade nomenclature adopted was Polyester wire enamel, the packaging contained the said trade nomenclature; that the excise authorities insisted that fresh classification list should be filed by them classifying the product under sub-heading 3208.10; that as excise authorities refused to clear the consignment unless the classification list was filed, they were constrained to file a classification list classifying the product under sub-heading 3208.10. He referred to their letter dated 3-11-1992 addressed to the Range Superintendent in which they had clearly mentioned that Department's contention that their polyester enamel should be considered under 3208.10 is incorrect.

6. We have considered the submissions of both the sides. Heading 32.08 reads as under :"32.08 Paints and varnishes (including enamels and lacquers) based on Synthetic Polymers or chemically modified natural poly- mers, or natural resins, whether or not modified, dispersed or dissolved in a non-aqueous medium; solutions as defined in Note 3 to the Chapter.

7. The Respondents have emphatically contended that the impugned product is a solution of Polyester resin and in high boiling solvents, so formulated as to be able to apply on copper and aluminium wire and that it consists of no pigment or colourant or paint. The Department has gone by the HSN Explanatory Notes according to which paints include enamels. We observe that the issue involves the question of composition of the product in question. No test report has been brought on record from either side. In absence of chemical report about composition of the product it is not possible to arrive at a conclusion. We are, therefore, of the view that in the interest of justice the matter should go back to the Assistant Commissioner to ascertain the composition of the product in question and to decide the classification accordingly after affording an opportunity of hearing to the Respondents. We order accordingly.