

**Commissioner of C. Ex. Vs. Perfect Circle Victor Ltd.**

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

**Decided On :** Jul-30-1999

**Reported in :** (2000)LC141Tri(Delhi)

**Appellant :** Commissioner of C. Ex.

**Respondent :** Perfect Circle Victor Ltd.

**Judgement :**

1.1 Respondents herein are manufacturers of gaskets from cork purchased from the market. Duty is discharged on the gaskets. But gaskets waste that arises during the course of manufacture of such gaskets is sought to be levied by the authorities below as agglomerated cork under Tariff Heading 45.01 because the waste is mentioned in the Explanatory Notes to HSN under 45.01.

1.2. On this contention, the finding of the lower appellate authority is as follows:- "I have gone through the submissions of the appellants. Chapter 45 of the Schedule to the Central Excise Tariff Act is in respect of cork and articles of cork. There is no mention of waste and scrap of cork in the Chapter Heading No. 45.01. There is considerable force in the contention of the appellants that the Explanatory Notes of HSN cannot be applied for classifying the goods under the Central Excise Tariff Act in absence of specific mention of waste in the Chapter heading. The entire Explanatory Notes of HSN cannot be read into Central Excise Tariff. The Explanatory Notes of HSN are useful aids in classification under the tariff but they cannot provide for the classification, which is not specifically mentioned in the chapter heading or sub-heading. In view of this, no duty was chargeable on waste

and scrap of cork rubber sheet a Chapter Heading 45.01 does not apply to the waste and scrap. The appeal is allowed." 2. Learned SDR, Shri K. Srivastava has reiterated the aforesaid submission of the Revenue.

3. Learned Consultant for the respondents, Shri Jagesha reiterates the findings of the lower appellate authority.

4. We have carefully considered the pleas advanced from both sides. We agree with the finding of the lower appellate authority that in the absence of any entry regarding waste of agglomerated cork, this cannot be included in Tariff Heading 45.01. Consequently, we do not find any substance in the Revenue's appeal. Hence, we dismiss the same.

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