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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-13-1999

Reported in : (2000)LC290Tri(Delhi)

Appellant : Gujarat Polycrete Private Ltd.

Respondent : C.C.E.

Judgement :

1. The issue involved in this Appeal is whether the products manufactured by the Appellants are classifiable under sub-heading 3922.90 as claimed by them or under sub-heading 6807.00 of the Schedule to the Central Excise Tariff Act as held by the Collector (Appeals) in the impugned order dated 13-4-1989.

2. M/s. Gujarat Polycrate Private Limited manufacture Sanitary ware articles, for example, bath tubs, shower trays, counter wash basins, water closets, flush tanks and bathroom accessories. They filed a classification list No. 6/86 claiming the classification under sub-heading 3922.90, which was approved by the Assistant Collector.

However, on appeal by the Department, the Collector (Appeals) set aside the order-in-original and classified the products under sub-heading 6807.00 holding that products in question are made out of raw materials like silica, quartz, dolomite with stone dust and these are mixed with polyethylene resin; that the essential character flows from the raw materials other than Polythelene resin which acts only as a binder and accordingly following Rule 3(b) of Interpretative rules, goods

would be classifiable under sub-heading 6807.00.

3. Shri K.K. Anand, ld. Advocate, submitted on behalf of the appellants, that the impugned products are manufactured out of Synthetic resins and the appellants use fillers like Silica, quartz, dolomite, and stone dust, as supporting or reinforcing agents, in the course of mixing operation: that resin constitutes 32% of the product whereas in organic fillers 68%; that the sanitarywares manufactured by the appellants, despite the use of fillers retain the essential character of articles of plastics; that the resin provides the essential character to the impugned products; that Rule 3(b) of the Interpretative Rules does not refer to composition of the product and accordingly percentage of resin is of no importance in applying the Rule 3(b) of the Interpretative Rules. He further submitted that the physical properties of cement bonded concrete were well defined and limited and it was thus necessary to explore new avenues if special demands made on concrete were to be met; that it was realised that the most promising and reasonable way to improve the properties of concrete was the utilisation of synthetic resins as bonding agent. In support of his contention, the ld. Advocate relied upon 'Respecta, Resin - concrete, Casting - Machine. Proposal 6773, according to which "This Concrete, a hardened mixture of multicomponent plastics and dry aggregates, offers a vastly increased strength, a high resistance to chemicals, an almost absolute impervi-ousness, quick curing and hardening - in fact just about those properties which cannot be achieved with the conventional cement concrete. Furthermore, it is easily possible to make very decorative products in all designs and with all surface effects, like marble, granite, slate etc. The ld.Advocate further mentioned that the product is termed as polyster stone which is a mix of filler materials, unsaturated polyster resin, hardners, and pigments, if desired; that the value of resin is very high in comparison to the value of filler material; that in case of technical application it is about 77% and in respect of decorative application is 68% as per the Book referred to above; that the technical literature describes the goods as Plastic resin concrete and accordingly they have named their products as "Polycrete" i.e. Polymer Concrete.

4.1 Ld. Advocate also mentioned that the Collector (Appeals) has decided the matter basing his decision on the test of predominance; that Supreme Court in

Collector of Customs v. Bakelite Hylam Ltd. - 1997 (95) E.L.T. 449 (S.C.) has classified the press plates for producing Plastic laminates and laminated sheets as moulds under Heading 84.60 of Customs tariff and not under 73.15 (2) as plates of iron or steel, on the basis of use of the product. He also relied upon the decision of the Apex Court in the case of C.C.E. v. Bakelite Hylam Ltd. -1997 (91) E.L.T. 13 (S.C.) and contended that the Apex Court did not accept the predominance theory in classifying decorative laminated sheets under Chapter 39 instead of Chapter 48; the classification was decided on the basis of essential character criteria. He further submitted that the ratio of this decision squarely applies to the present matter as facts are almost identical. Reliance was also placed on the decision in Crown Sanitarywares (P) Ltd. v. C.C.E., Madras - 1996 (17) RLT 423 (T) wherein the fibre glass reinforced plastic articles were classified under Heading 39.22 and not Heading 70.14 as the articles were manufactured by laminating the glass fabric by using plastic materials and moulding them into article. The ld. Advocate further submitted that in the present matter fillers have been reinforced by resin and the acquisition by the products of the essential character of plastic are traceable to the use of synthetic resin as a bonding agent.

4.3 He finally submitted that the reliance cannot be placed on the Explanatory Notes of H.S.N. as Central Excise Tariff was not completely aligned with the H.S.N. at the relevant time.

5. Countering the arguments, Shri Satnam Singh, ld. SDR first reiterated the findings contained in the impugned Order-in-Appeal and, thereafter, submitted that the Chemical Examiner, in his report, had categorically opined that article was other than those specified under Item 15A(2) of the erstwhile Central Excise Tariff; that Item 15A(2) corresponds to sub-heading 3922.90; that the report of the Chemical Examiner has not been rebutted by the Appellants by adducing any other opinion from the experts. He also pleaded that what is required to be seen is whether the heading/sub-heading in Excise Tariff Synchronised with the Heading in H.S.N. and if yes, the Explanatory Notes to H.S.N.have to be relied upon for the purpose of classification as held by the Supreme Court in the case of C.C.E. v. Woodcraft - 1995 (77) E.L.T. 23 (S.C.). He further, submitted that agglomerated items have not been excluded from the purview of Chapter 68 of the Schedule to

the Central Excise Tariff Act. He also placed reliance on decision the case of Union Carbide India Ltd. v. Collector of Customs - 995 (79) E.L.T. 521 in which it was held that Interpretative Rule 2(b) does not deal with the composite goods made of different materials and the relevant rule for the same is Interpretative Rule 3(b).

6. In reply, Shri Anand, ld. Advocate, submitted that it is well settled law that the Chemical Examiner is not competent to give any opinion about the classification of goods; that the Explanatory Notes to H.S.N. has only persuasive value up to 1988. He also mentioned that the judgment in Bakelite Hylam case, supra, deals with the classification under both the Central Excise Tariff - Old as well as New. He contented that according to the ratio of that decision, the impugned products were classifiable under sub-heading 3922.90 of the Tariff.

7. We have considered the submissions of both the sides. The two rival tariff headings reas as under :"68.07 All other articles of stone, plaster, cement, asbestos, mica or of similar,"39.22 Other articles of plastics and articles of material of heading 8. According to the Appellants they manufacture sanitaryware articles from Synthetic resins which constitute the base material and use inorganic fillers such as Quartz, Stonepowder, Dolomite and Stone dust; that the essential character is given to the impugned goods by the synthetic resins. The Chemical Examiner's report, referred to by the ld. DR, has been discarded by the Collector (Appeals) himself and as such, it is not open to the Department to rely on the same. The Collector (Appeals) has classified the impugned goods under Heading 68.07 relying on Interpretative Rules 3 (b) and 3(c) as according to his findings, the essential character flows from the raw materials other than polyethylene resin which acts only as a binder and in any case Heading 68.07 comes later than Heading 39.22. We find that the Tribunal in the case of Crown Sanitarywares (P) Ltd. v. C.C.E., Madras, supra, considered the classification of fibre glass reinforced Plastic articles and classified them under Heading 39.22 as the articles were reinforced plastic. In the present matter, synthetic resin is mixed with natural fillers and sanitarywares are manufactured which are named as Polycrete. According to The Scope and Application of Synthetic Resin Concrete by Dipl. - Ing. Remir Kris "This concrete, a hardened mixture of multi component plastics

and of dry aggregate, offers, a vastly increased strength, a high resistance to chemical, an almost absolute imperviousness, quick curing and hardening in fact just about those properties which cannot be achieved with the conventional cement concrete." This Technical Book further mentions that "The strength and rigidity of the materials, after hardening, depends on the graining, resin used, content of resins, and density. It appears, thus, that the essential character is provided by Synthetic resin. According to Rule 3(b) of rules for the Interpretation of the Schedule to the Central Excise Tariff Act, composite goods of different materials shall be classified as if they consisted of the material or component, which gives them their essential character. As the Synthetic resin gives the essential character, the impugned products are classifiable under sub-heading 3922.90 of the Central Excise Tariff Act. Accordingly the appeal is allowed.

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