

Commissioner of Central Excise Vs. Basf (India) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-28-1999

Reported in : (2000)(115)ELT485Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Basf (India) Ltd.

Judgement :

1. The assessee manufactures inter alia polystyrene mouldings used as packing material. The initial raw material is styrene monomer. The assessee paid duty on these, which it manufactured classifying them under Heading 3903.10 of the Tariff. Styrene in this form converted into pre-expanded bead by heating is in the presence of steam, when it acquires compressibility. After some further processes this is used in the manufacture of final product. The assessee had availed of the benefit of Notification 53/88. Entry No. 39 of the table to that notification exempts all goods other than of polyurethanes falling under Headings 39.23,39.24 and 39.26 on payment of duty, if they made out of goods falling under Headings 39.01 to 39.15 of the Tariff on which duty has been paid and if such articles are produced out of plastic scrap. Notice was issued proposing to deny the exemption on the ground that the mouldings were manufactured out of pre-expanded polystyrene, which was an article of plastic classifiable under Heading 39.26. Therefore, the condition in the notification that the articles should be manufactured out of goods falling under Headings 39.01 to 39.15 of the Tariff was not satisfied. The Assistant Collector confirmed the demand. On appeal from that order, the

Collector (Appeals) accepted the contention of the assessee that pre-expanded polystyrene was an intermediate product arising in the course of manufacture of the finished product from the raw material. He noted that the trade notice of the Bombay Collectorate dated 21-4-1986 issued with reference to Notification 132/86 which was a predecessor to Notification 53/88, clarified that exemption would be available notwithstanding that at the intermediate stage in the manufacture of such articles of plastic classifiable any other than not mentioned in the chapter. Hence this appeal by the department.

2. The departmental representative explains the reasoning and grounds in the appeal, which is the same as the basis for the notice, i.e., the pre-expanded polystyrene is not classifiable under headings specified in the condition to the notification. He also contends that this point has been elaborately explained by the Board in its letter F.No.39/93/60/89-CX, dated 12-4-1986. This letter had not been included to the notice. The departmental representative was not able to produce it.

3. Advocate for the respondent brought to our notice the trade notice 111/90, dated 5-10-1990 of the Bombay Collectorate. This trade notice explains that the benefit under Notification 53/88 would be available to final products .made out of intermediate products not falling under any of the Headings 3901 to 3915 of the Tariff, if these intermediate goods are purchased from the market. It explains that there is no requirement in the notification that it applies to integrated units only. It is very clear from this that there is not least doubt in the mind of the department that the notification would clearly apply to the cases where an intermediate product arises in the course of the manufacture of the final product (in the process of manufacture of the raw material to the finished product) the position clear. Reliance by the Advocate for the respondent on the Tribunal's decision in C.C.E. v.IDL Chemicals Ltd.Gujarat Plastic Industries v. C.C.E. -1992 (59) E.L.T. 104 that the exemption under notification cannot be denied only for the reason that an intermediate product arises in the course of manufacture of the finished excisable product is well founded; there are many other decisions to the same effect. The exemption therefore could not be denied solely for this reason. We therefore see no reason to interfere.