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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-08-1984

Reported in : (1984)(18)ELT387TriDel

Appellant : Lotus Inks

Respondent : Collector of Customs

Advocate for Pet/Ap. : Shri. Venkataraman

Judgement :

1. The captioned appeal was initially filed as a Revision Application before the Central Government which, in terms of Section 131-B of the Customs Act, 1962, has come as transferred proceedings to this Tribunal for disposal as if it were an appeal presented before it.

2. The appellants imported a consigment of "Alkali Blue Flushing" which was charged by the Madras Customs authorities to additional (countervailing) customs duty with reference to Item No. 14-D of the Central Excise Tariff Schedule (CET). The appellants contended before the Assistant Collector that the product was not usable in any dyeing process since it was insoluble in water for application to the material to be dyed. The product was applied through the medium of oil and, therefore, dyeing as in the case of dyestuffs would not be possible. On this basis, they contended that the product was correctly classifiable under Item No. 14-I(i)(ii) of the CET. This claim did not find favour with the Assistant Collector. The appeal against the Assistant Collector's order also did not meet with success. It is the

Appellate Collector's order dated 20th June, 1981 which is under challenge before us.

3. The imported product is stated to be in the form of a paste containing a finely dispersed or flushed pigment in an inert mineral oil medium.

4. The appeal was heard on 8th June, 1984. Shri Venkataraman, learned Counsel for the appellants, submitted that the goods in dispute were soluble neither in water nor in oil. It is not capable of penetrating the substrate. It is used for enhancing the brightness of printing ink and not for any dyeing purpose. Therefore, according to him, the appropriate classification would be under Item No. 14-I(i)(ii) of the CET as "pigments and colours not elsewhere specified". He relied in this connection on Order No. 199/83-C, dated 10th May, 1983 passed by this Tribunal in a similar case of the appellants. He further submitted that the Tribunal's decision in Order No. C-271/84, dated 22nd May, 1984 in the case of Devarsons Private Ltd., Ahmedabad v, Collector of Central Excise, Ahmedabad [Appeal No. ED(SB) (T)A. No. 22/74-C] also supported his contention.

5. Appearing on behalf of the Revenue, Shri V. Lakshmikumaran, stated that the distinction between pigment and pigment dyestuffs lay in the method of their application. According to the Tribunal's decision in the Devarsons case, while pigments do not dissolve in the medium in which they are applied, pigment dyestuffs dissolve in the medium. Since the appellants' Counsel has made a statement at the Bar that the product does not dissolve in the application medium, the ratio of the two orders of the Tribunal cited by the Counsel for the appellants would apply.

6. We have carefully considered the submissions made before us. In our Order No. C-271/84, dated 22nd May, 1984 in M/s. Devarsons P. Ltd. case, we have brought out the distinction between pigments and dyestuffs after consideration of a number of technical authorities. Our finding was that while pigments remain suspended or dispersed in the medium of application, dyestuffs dissolve in the medium of application.

In Order No. 199/83-C in Appeal No. 262/80-C (filed by the same appellants), the Tribunal held that' 'Alkali Blue Flushing '' was correctly classifiable under Item No. 14-I(i)(ii) of the Central Excise Tariff. However, solubility in the medium or any other relevant substance cannot be the sole arbitrating factor to decide whether a colour/colourant is a dyestuff pigment or a non-dyestuff pigment. It is its manner of action in the actual colouring process that is the surest test. Most colourants can be used as coating colourants (non-dye pigments) as well as penetrative integrating colourants (dye pigments); some modification in process may be necessary. But the fact is that some colourants are generally used as surface colourants while some others have their general application as dye (integrating) colourants.

There is no permanent and valid dividing line between a dye and a pigment and authorities do not make such irrevocable distinction because many processess that involve insoluble pigments/colourants are dyeing processes.

7. Dyeing is understood to be a process of imparting colour in which the whole body of the material is coloured; the colour integrates with the coloured material and becomes inseparable-it is not possible to remove the colour from the coloured material.

8. Colouring can be by coating, staining, covering. The purposes of this colouring are protection, beautifying, giving a surface property not present in the coloured material, writing, to name a few. This method of colouring is, in cases like those of protection/beautifying, removable, reversible to permit a new colouring to be imparted to the material. Even in stains, printing, it is reversible to a degree sufficient to allow a new deposit, even though the substrate is adversely affected. But in this process of colouring, there is no, or very little, penetration by the colour/colourant into the substrate body. Stains and printing depositing on paper, wood cotton fabric do penetrate the substrate to a little depth; but this penetration is entirely due to the absorbent nature of the material and is not part of the scheme of staining or printing.

9. We think that it would be much more preferable not to be circumscribed by one rule of solubility in this matter, when we know that the subject permits of no such

set division. We will go by the merits of a case and the nature, properties, character of a substance and its application and action. This product, Alkali Blue Flushing, is a pigment, that is to say, a colourant that is used in printing for enhancing the brightness of printing ink-this is not a dyeing process.

Its correct classification is under Item 14-I(i)(ii), CET.10. We allow the appeal and direct consequential relief to the appellant within three months from this order.