Colour Chem. Vs. Commissioner of Central Excise

Colour Chem. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/18790

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-02-2000

Reported in : (2000)(121)ELT555TriDel

Appellant : Colour Chem.

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal arises out of and is directed against the order in original dated 17-5-1993 passed by the Collector of Central Excise, Bombay.

2. The issue relates to benefit of Notification No. 53/88 dated 1 March, 1988. Whether items i.e DERMAFILL CC-20 and DERMAFILL CC-21 are exempted in terms of Sr. No. 9 of the above notification is an issue to be considered herein.

2. Show Cause Notice has been issued proposing to deny the benefit of Notification No. 53/88 vide Sr. No. 9 and apply the rate of duty as applicable vide Sr. No. 42 of the said Notification 53/88 of Central Excise. The relevant entries in the said notification are as under : -

---

3905.10 Homopolymer and copolymer resin 20% or emulsions based on acrylic and/or vinyl Ad valorem 3905.20 monomers

---

39.01 to 39.15 All goods, other than poly urethanes fal 20% ling under sub-heading No. 3909.60, Ad valorem waste, parings and scrap of flexible poly- 3.

Arguing for the appellants Sh. V.L. Kumaran, Ld. Advocate submitted that whether the products in question are of emulsion basis on Acrylic or a solution is an issue to be considered herein. The party claimed in this case that item in question is homopolymer and copolymer resin emulsions based on acrylic monomers. According to the department it is not an emulsion but only a solution. While explaining the term emulsion, he submits that if one item is mixed with the other item and if the item is not disolved therein it amounts to emulsion, while mixing the items if one of them is dissolved then it can be construed as a solution. While referring to the chemical examiner's report relied by the department he submits that chemical examiner specified that items are in the form of turbid liquid and it is a solution. He submits that turbid refers to emulsion. On the other hand in the report given by the IIT, it is specified that this item is of emulsion. He also referred to the findings given by the adjudicating authority particularly in para 31 and 32 wherein he admitted that the item is partially solubilisable resin and not exclusively an emulsion. He submits that department has denied the benefit on the ground that products are found to be not emulsion exclusively. He submits that there is no such restriction in the aforesaid notification.

5. We have carefully considered the matter. Notification 53 of 88 exempts if the item is of homopolymer and copolymer emulsions based on acrylic and/or vinyl monomers. Admittedly item is of emulsion. Benefit has been denied on the ground that item is not emulsion exclusively.

There is no such restriction for denying the exemption in the notification as it was rightly argued on behalf of the assessee. There is a clear finding by the adjudicating authority that item is partially of emulsion. In these circumstances and in view of the wordings in the notification there is no justification to deny the benefit on the ground that item in question is not emulsion exclusively. In the view we have taken the plea of the party is accepted and accordingly appeal is allowed.