

ipcl Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-28-2000

Reported in : (2000)(72)ECC434

Judge : J T J.H., G Srinivasan

Appellant : ipcl

Respondent : Commissioner of Central Excise

Judgement :

1. When the application seeking waiver of pre-deposit of duty amounting to Rs. 56,79,62,795 was argued by Shri V. Sridharan, it appeared that at this stage itself the main appeal could be taken up for disposal.

Both sides agreeing, this was done after granting waiver of pre-deposit as prayed for.

2. The appellants use Raw Naphtha as the main raw material. Thermal cracking of such Naphtha results in several products, one of which is pyrolysis gasoline. This product is further used in the manufacture of other products. The appellants had filed classification list for such intermediate product pyrolysis gasoline from time to time. They had claimed classification under sub-heading 2707.90, and later under 2710.19. During this period the assessee had claimed the benefit of Notification No. 28/89-CE as amended and later of Notification No.217/86-CE as amended which notifications permitted duty free consumption of certain substances in the

manufacture of resultant products. With effect from 16.3.95, the assessee sought similar benefit of Notification No. 67/95-CE. This notification however, denied the facility to goods falling under sub-headings 2710, 2710.11, 2710.12, 2710.13 and 2710.19. In seeking to avail the benefit of this Notification, the assessee had claimed classification under heading 2710.90.

3. Show cause notice was issued on 2.2.98 alleging that pyrolysis gasoline was correctly classifiable under heading 2710.19 and that in the absence of the benefit of Notification No. 67/95, the assessee was required to discharge the burden of duty thereupon. The duty on goods so captively consumed without payment of duty was calculated at the figure of differential duty referred to in paragraph 1 of the order above, vide a number of show cause notices. The Assistant Commissioner adjudicated 9 such show cause notices confirming the duty. Against this order the assessee filed an appeal, the Commissioner (Appeals) vide his order dated 24.12.98 directed them to deposit Rs. 28,39,31,392. He later modified the quantum of deposit at Rs. 20 crores by his order dated 22.9.99 on noticing the failure of the assessee to obey his directions, he dismissed the appeal under power of Section 35F of the Central Excise Act, 1944. Hence the appeal and the present application.

4. We have heard Shri Sridharan Ld. Counsel for the appellants and Shri U.V. Gaitonde the Ld. DR for the revenue.

5. We have examined this structure of Chapter Notes and the construction of the sub-heading claimed by the assessee for the same product from time to time. Although the Assistant Commissioner has noted with disapproval the frequent changes adopted by the assessee in describing this product, he has not drawn any adverse conclusion therefrom. Therefore the very short point involved is the classification of the Pyrolysis Gasoline. Heading 2710 speaks of Petroleum oils etc. The main subgroups are (1) Motor Spirit (2) Kerosene (3) Diesel Oil (4) Furnace Oil (5) Lubricating Oil (6) Non-Standard Oils (7) Lubricating Preparations and (8) All others. The appellant seeks the residual classification in the residual heading whereas the department seeks classification under the residual heading under the motor spirit classification. The tariff is structured on the chemical

composition of the various products e.g. the material requirements for classifying the goods under sub-heading 2710.12 are the Flash point and Special boiling point of spirits falling thereunder. The other headings also proceed on similar criteria with added tests such as of viscosity when one comes to the lesser products such as diesel oil. It is therefore essential that the classification be done in terms of specific findings in a laboratory.

6. We find that in the proceedings this has not been done. The show cause notices make a plain assertion without giving any chemical criteria in support of the charge. The assesseees were similarly guilty of not placing before the authorities, specific findings of a laboratory establishing their case. Before the Assistant Commissioner the assesseees made a claim that the sample should be drawn and tested.

This finds place in the Assistant Commissioner's order. The claim was also made by the assesseees before the Assistant Commissioner that the contested substance could not be used as fuel in spark ignition engines. This was a technical submission based on Chemistry. The Assistant Commissioner did not accede to the request of drawal but instead chose to base his belief upon some Chemical Dictionary to establish his case. This is an extremely hazardous manner in dealing with the issue of classification of a product where the classification is to be determined by finding all chemical parameters. *Cellulose Products of India Ltd. v. Collector of Central Excise, Vadodara*], wherein the phrase 'suitable for use' occurring in sub-heading 2710 has been analysed. He also referred to the Tribunal Judgment in the case of *Indian Oil Corporation Ltd. v. Collector of Central Excise (Tribunal)* wherein it has been held that where the classification depends upon fulfilment of two criterion, in classification it has to be shown that each criterion has been tested.

8. We are not impressed by the citation made by Shri Sridharan of the certificates dated 22.1.99 of an officer of the Indian Institute of Petrochemical. It makes a general statement and is not specific to the product manufactured by the present appellants.

9. On the grounds of improper appreciation by the Assistant Commissioner, we allow this appeal and remit the proceedings back to the Jurisdictional Assistant Commissioner. He shall immediately cause samples of the contested product to be drawn as prescribed in the relevant manuals. He would send the samples not only to the CRCL at New Delhi, but also to Indian Institute of Petroleum. He may at his discretion send to any other agency samples of the product. Assessee would also be at liberty to send such samples drawn by the Assistant Commissioner to any other agency. On receipt of the opinion the Assistant Commissioner shall disclose the findings to the assessee and shall give further opportunity to state their case orally or in writing before him and would thereafter pass a well reasoned speaking order on the issues before him.

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