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Commissioner of C. Ex. and Cus. Vs. Pack Trade

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-05-2000

Reported in : (2001)(129)ELT141Tri(Mum.)bai

Appellant : Commissioner of C. Ex. and Cus.

Respondent : Pack Trade

Judgement :

1. M/s. Mahindra and Engineering Products Ltd. imported cyanoacrylic adhesive packed in carbuoys. It passed on this commodity to M/s. Pack Trade, the respondent before us, for filling into metal tubes, each holding 2 or 3 grams, and bearing the label 'Mr. Fixit', for use by the consumer as an adhesive. The substance hardens on exposure to air. It was therefore necessary for the respondent to flush out air from the tubes before filling the adhesive, and thereafter, purge the tubes with nitrogen in order to remove all traces of air.

2. The question for consideration in this appeal is whether this process amounts to manufacture. In the order impugned in this appeal, the Commissioner (Appeals), overruling the order of the Additional Commissioner, has held that since no new product emerges, there is no manufacture. This is challenged in this appeal.

3. After having heard both sides, we do not find any case for interference. The grounds in the appeal are that repacking of the adhesive is incidental or ancillary to the process of manufacture and involves elaborate complex process involving use of chemicals. "Mr.

Fixit" is a new product commercially known to the market.

4. It is accepted, by both the Additional Commissioner and Commissioner (Appeals), that the process carried out by the respondent is simply one of repacking, and that, by that process, there is no change in the nature of the adhesive. In fact, the use of the nitrogen is to ensure that the adhesive remains in the same form in which it was emerged and does not become unsuitable for use. The fact that the process requires use of complex machinery has nothing to do with whether there is any manufacture or not. As long as the product remains the same, the nature of the machinery used in the process is irrelevant. The contention that, merely by labelling the product, a new product emerges obviously is unacceptable, except in a situation where there is a provision in law deeming that to be manufacture. That is not the case before us.

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