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Viral Laminates Ltd. Vs. Commissioner of C. Ex. and Cus.,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-10-2002

Reported in : (2002)(143)ELT143Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Viral Laminates Ltd.

Respondent : Commissioner of C. Ex. and Cus.,

Judgement :

1. The appeal is against the order of dismissal of the Asstt.

Commissioner of the claim for refund of the duty paid on plastic strap filed by it before it.

2. The facts that emerged from the appeal are these. The appellant was engaged in the manufacture of paper based decorative laminated sheets and used in the manufacture biaxilly oriented polypropylene (BOPP) film. It had declared this BOPP film is an input and taken as Modvat credit the duty paid on it. In the course of the utilisation of BOPP film by the appellant in the manufacture of laminated sheets, waste and scrap of such film emerged. The appellant paid the duty on these vessels scrap that emerged between April and August, 1994. It subsequently claimed refund of this duty. The claim for refund was based on two grounds. The first was that the appellant was not engaged in the manufacture of scrap or BOPP film and the scrap did not emerge as a result of the manufacture

and hence not liable to duty. The second was that scope of BOPP film that emerged in the appellant's factory was not specified in the schedule to the Central Excise Tariff. Part of the claim was barred ,by limitation having been filed beyond the period of six months specified in the statute. The Asstt. Commissioner after considering the submissions of the claimant, hearing him, did not accept these contentions and dismissed the claim noting also that it has also not been shown that the incidence of duty paid had not been passed on as required by Sub-section (2) of Section 11B of the Act.

This order having been confirmed by the Commissioner (Appeals), the matter is before us.

3. Appellant is absent and unrepresented despite notice. We have read the memorandum and heard the Departmental Representative.

4. We do not find it possible to accept the contention that because the appellant did not engage in the manufacture of BOPP film, the scrap of such film that emerged at its factory is not the result of manufacture.

We do not see how the fact that the appellant did not manufacture BOPP film leads to the conclusion that it could not manufacture scrap of such film. Scrap of plastic can arise in one place out of plastic which has been manufactured elsewhere. It is not correct to say that the waste scrap of plastic or any other substance arise coterminously with the arising of that material itself. The fact that the appellant did not set out to manufacture plastic is again irrelevant. We are concerned with the physical emergence of a specific substance and not with whether it emerged as a result of conscious intention on the part of the manufacturer. It is therefore clear that plastic waste is a result of manufacture.

5. We are also not able to agree that the plastic waste which emerged at the appellant's hands is not capable of being classified under Heading 39.15 of the Tariff. Heading 39.15 is for waste and scrap of plastic. BOPP film scrap that emerged is clearly includable in such plastic waste and scrap. The argument that this heading will only apply to waste and scrap which arises during the course of manufacture of such plastic is not acceptable. We have already dealt with it

earlier.

Therefore there is no merit in the claim.

6. The further contention that the provisions of Sub-section (2) of Section 11B of the Act which requires that before refund is sanctioned to the claimant the existence of duty which has not been passed out to any other person will not apply to the appellant because its claim related to Modvat credit is clearly erroneous. The refund of the amount that was paid duty that the appellant paid on the plastic scrap, that is clear from its own appeal. It was not the refund of the Modvat credit that it took.

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