Collector of Central Excise Vs. Goodlass Nerolac Paints

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-08-1986

Reported in : (1986)(10)ECC107

Appellant : Collector of Central Excise

Respondent : Goodlass Nerolac Paints

Judgement :

1. Short question involved in this appeal is whether the product described s "Modified Short Oil Linseed Oil Alkyd" for internal consumption inside their own factory by the respondent (hereinafter referred to as assessee) is covered by the expression Alkyd resins as defined in the notification 122/71-CE dated 1.6.71 (as amended). The assessee's contention is that it is covered by the said expression - and is in fact a chemically modified Alkyd resin as included within the scope of the said expression in the notification. On the other hand, the Revenue insists that it is not a chemically modified resin. The lower appellate authorilty has upheld the contention of the assessee.

2. As stated in the grounds of appeal on the authority of the Deputy Chief Chemist, Bombay, who tested the sample of the product drawn by the department, the product is "composed of synthetic resin based on poly basic acid, polyhydric alcohol, monobasic fatty acid, rosin and formaldehyde. The assessee has used about 1.5% of paraformaldehyde on phthalic anhydride content. It is contended that paraformaldehyde goes in the chemical reaction to reduce the functionality of polyol in the synthetic resin and bringabout the better property of Alkyd so

manufactured and therefore claim the product as Modified Alkyd Resin qualifying for exemption under notification 122/71. It is true that the paraformaldehyde may enter into the chemical reaction but it is not listed as modified in the technical literature for the manufacture of Modified Alkyd Resin. However, rosin used as one of the ingredients is treated as a modifier. It can also not be assumed that any chemical which enter into a chemical reaction can be construed to mean a chemically modified resin." Learned Deputy Chief Chemist, Bombay, appears to have relied on page 686 of Encyclopedia of Polymer Science and Technology, Vol. I at which list of modifiers for Alkyd Resins have been given. Since Paraformaldehyde does not occur in the list, the learned Deputy Chief Chemist, Bombay does not consider it as a modifier. Based on this opinion, it has been stated by the Appellant-Collector of Central Excise, Bombay - that the product manufactured by the assessee cannot be treated as a chemically modified Alkyd Resin within the scope of the expression "Alkyd Resin" as defined in the notification mentioned supra. The above grounds were reiterated by the learned departmental representative appearing for the appellant.

He also stressed that it is for the assessee to prove that he is covered within the expression "Alkyd Resins" and no material has been adduced by him to that effect.

3. The learned counsel, Shri Lakshmikumaran, for the respondent-assessee submitted that the ground of appeal now taken was in the first instance never disclosed to them. In this connection he invited the attention to the show cause notice issued by the Superintendent of Central Excise and the order-in-original passed by the Assistant Collector of Central Excise. The show cause notice merely states "in the light of the findings of the Deputy Chief Chemist, the product in question will not come under the purview of notification 122/71 dt. 1.6.71 for claiming exemption from payment of duty under Tariff Item 15A." The list of findings earlier sent by the Superintendent referred to in the show cause notice merely states the composition of the product as referred to earlier without indicating as to how the Deputy Chief Chemist has arried at his opinion that it is not a chemically Modified Alkyd Resin.

Controverting the next plea of the departmental representative,learned counsel for the assessee submitted that in the very first instance in reply to the show cause notice the assessee had submitted with reference to the technical authorities as to why the product in question is considered as a chemically modified Alkyd Resin. In this connection, he drew attention to page 2 of the reply to the show cause notice-cum-demand which has extensively quoted from the book "Alkyd Resin Technology Inter Science Manual by Mr. T.C. Patton." Extracts from this very book were given by the learned counsel during the course of personal hearing before us. From the extracts of page 43-44 of the said book, it is observed from the heading itself namely, "Alkyd Modification with Formaldehyde" that P-Formaldehyde modifies the Alkyd Resins. It goes on to add" the effect of adding formaldehyde to an alkyd composition (in the form of P-formal-dehyde or formalin) has been found to result in the formation of cyclic or inner formals, which leads to a reduction in the functionality of a polyol, rather than in a cross-linking reaction between two different polyols, which leads to polymerisation." He also submitted that the absence of P-formaldehyde from the list of modifiers at page 686 of Encylopedia of Polymer Science & Technology (Vol. I) does not indicate that the said chemical is hot a modifier, when it is clearly stated as a modifier in other authoritative tax as mentioned by the assessee right from the first stage of the original authority. In fact, no attempt has been made by the department to rebut the arguments of the asessee.

4. We find considerable force in the pleadings of the learned counsel for the assessee. On a perusal of the Encyclopaedia of Polymer Science & Technology (Vol. I) relied upon by the department, we observe that the list of modifiers given in Table-3 at page 686 of the said book can by no means be said to be an exhaustive list of modifiers. Apart from the fact that there is no indication that the list is exhaustive' it goes on to say at page 685 in the Section "Modifiers" that "several of the modifiers given in Table-3 might actually be considered as Alkyd ingredients. They have been included as modifiers to recognise historical convention rather than with precision". From this it is apparent that the list in Table-3 of modifiers indicating their advantages and disadvantages cannot by any means be considered to be an exhaustive list of modifiers for Alkyd Resins. In view of the technical authority adduced by the assessee no doubt is left that the

product in question is a chemically modified Alkyd Resin. Accordingly, it is covered by the said notification. Hence the appeal is set aside.