Collector of Central Excise Vs. Synthochem (India) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-05-1987

Reported in : (1987)(12)ECC45

Appellant : Collector of Central Excise

Respondent : Synthochem (India) Ltd.

Judgement :

1. This is an appeal filed by the Collector of Central Excise, Patna against the order of the Appellate Collector of Central Excise, Calcutta holding that Chlorinated Wax is not excisable to duty under Item 11-A of the Central Excise Tariff.

2. Smt. J.K. Chander, 3DR appears on behalf of the Collector of Central Excise, Patna and submits that she relies gn two recent d%cisions of this Tribunal. Firstly, the decision in the case of Heeral Enterprises, Bombay v. Collector of Customs, Bombay and Ors. - 1986 (25) E.L.T. 269, in which it was held that waxes are classifiable under Item 11-A of the Central Excise Tariff. Secondly, the learned Departmental Representative relies on the decision in the case of Guadian Plasticote Ltd., Calcutta v. Collector of Central Excise, Calcutta and Ors. - 1986 (24) E.L.T. 542 in which it was held that when a new and distinct product emerges, notwithstanding that it does not move out of the Tariff Item under which it might have before such emergence paid duty, it woudd nevertheless be liable to further duty. The second decision is relied upon to support the contention that although the wax might be duty-paid, yet upon chlorination, a new commercial product

emerges, which should be dutiable under the same tariff item again.

3. Shri Harbans Singh, Advocate appears on behalf of the respondents.

The learned advocate submits that respondents are chlorinating duty-paid wax. No further duty becomes payable on such chlorination under Item 11-A of the CET because on such chlorination, the product becomes a plasticiser falling for classification under Item 68 of the Central Excise Tariff. Shri Harbans Singh has filed a photostat extract from the Handbook of Small Scale Plastics Industries by R.K.. Gupta, with a view to define his product. Our attention has also been invited by him to the Madras Trade Notice No. 209/80 dated 10.11.80 in which plasticisers are specifically classified under Item 68 of the Central Excise Tariff.

4. We have carefully considered the facts of the case, the decisions of the lower authorities and the submissions eade before us. In the first instance, we should like to observe that terms of the appeal are themselves somewhat confused and the arguments put forward before us oraldy on behalf of the Collector are not wholly consistent with them.

As per the statement of facts accompanying the appeal, it is conceded that chlorinated Paraffin Wax has got wide fields of application as plasticiser. This would appear to support the point made by the respondents that the item no longer remains a mere wax classifiable under Item 11-A of the Central Excise Tariff. However, the substance of the argument put-forth by the learned Departmental Representative seems to be that, firstly, even chlorinated wax remains a wax classifiable under Item 11-A of the CET and secondly, that as per the ratio of this Tribunal's decision in the case of Guardian Plasticote Ltd., Calcutta (supra), since it emerges as a new and distinct commercial product, duty is payable again under Item 11-A of the CET, after chlorination.

The decision of this Tribunal in the case of Heeral Enterprises (supra) is cited in support of the contention that all waxes are classifiable under Central Excise Tariff Item No. 11-A. We do not think that either of the decisions cited by the learned Depart-mentad Representative supports the case of the appellant Collector. In the Heeral Enterprises case, it was held that all waxes, whether derived directly or indirectly from refining of petroleum will be covered under Tariff Item 11-A. This decision does not support the contention being made here that chlorinated wax, which, it is admitted even in the appeal is a new commercial product, would necessarily be classifiable under Item 11-A of the Central Excise Tariff. By citing the decision of this Tribunal in the case of Guardian Plasticote Ltd. (supra), the Departmental Representative has only fully supported the contention that a new and distinct commercial product emerges on chlorination of the wax. Now, the question is, as to whether on such chlorination the product still remains essentially a wax. The respondents have shown that on such chlorination, the product in fact becomes a plasticiser. This is not only not denied by the appellants, but as per the terms of appeal, this point is specifically conceded. The question then arises whether such a plasticiser sould be classifiable under Item 11-A of the Central Excise Tariff and liable to duty again. The answer obviously has to be no, as the tariff item does not provide for such inclusion. The learned advocate has in fact referred to some Trade Notice issued by the department as referred to above, in which plasticisers have been specifically classified under Item 68 of the Central Excise Tariff.

This is not denied by the learned Departmental Representative.

5. In view of the foregoing discussio., this appeal must fail.

Dismissed.