

Collector of Central Excise Vs. Jay Enterprises and 5 ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-23-1987

Reported in : (1987)(12)ECC28

Appellant : Collector of Central Excise

Respondent : Jay Enterprises and 5 ors.

Judgement :

1. These are appeals filed by the Collector of Central Excise, Ahmedabad against the orders of the Collector (Appeals), Bombay.

2. Brief facts of the case are that the respondents manufacture phenol formaldehyde for captive consumption out of raw materials - Mela-mine, Formaldehyde, Phenol, Methanol, Caustic Soda, Hexamin and Hydrochloric Acid for use in the manufacture of laminated sheets. The process of manufacture as seen from the record is as under :- "Formaldehyde is pumped into reaction vessels and thereafter melamine is added with constant stirring. Hydrochloric acid in very small quantity is added to bring down the PH (to accelerate the reaction). Thereafter, the temperature is increased to 60 to 80C, as required and thereafter the same is brought down to 60C. At that time some quantity of caustic soda or methanol, as the case may be, is being added. In some cases the water is separated from formaldehyde and in remaining cases water is not taken out." The chemistry of reaction for the formation of phenolic resins as given by the respondents as Annexure 'B' of the Appeal Memorandum is reproduced as Annexure 'A' to this Order. The Phenol Formaldehyde resin is formed in three

forms and there are three reactive stages for formation of the respective forms. Here we are concerned with first stage of reaction which has been abstracted by the appellants from Reference Book - Material and Technology - Volume VI - page numbers 587 to 593. For the formation of 'A' Stage it has been stated in the same Reference Book as under :- "Resol resins. - In the presence of alkalis the condensation to polynuclear compounds take place much more slowly compared with the acid state. A higher formaldehyde concentration can therefore be used e.g. P/F = 1/1.1 - 1/1.5 (for moulding and laminating); P/F = 1/1.5 - 1/2.5 (for casting resins and adhesives). The reaction is carried out in tanks, in aqueous or alcoholic solution, with small quantities of catalysts (NH₄)H, Na OH, Ba(OH)₂ etc. The condensation must be carefully controlled to prevent premature gelation. The resols are normally used in the viscous condition for various further processing. Solid resols can be obtained by careful evaporation. On prolonged heating the resols convert to hardened resite; much water is here set free as a result of the chemical reaction of the reactive mythylol phenols, which for the most part make up the resols. Subsequent addition of strong inorganic acids gives rise to a very rapid and vigorous reaction to resite. This process is used in the manufacture of foamed phenolic plastics.

Resols used as starting materials have a very limited storage life owing to the presence of reactive groups." There is no dispute regarding the fact that when 'A' Stage resin in question is formed there are reactive groups present in the mixture and for formation of the resin from 'A' to 'B' Stage and then to 'C' Stage, the reaction has to be controlled with the necessary additives and application of necessary heat and pressure depending upon what is required to be produced. It is also not disputed that technically and commercially, the resins in question formed in different stages are recognised as categories apart having specified uses depending upon the end-product to be manufactured. In the case of respondents, the material manufactured is used for manufacture of laminated sheets.

3. In the proceedings before the Assistant Collector, the respondents pleaded that the goods had been found to be a reacting mixture and by its very nature could not be held marketable and therefore for the purpose of levy of duty under the Central

Excises and Salt Act, these could not be considered as goods. It was pleaded that these goods were not stable products and had no shelf life. It was pleaded that in the reaction mixture manufactured, the reaction was still on-going and that the reaction was complete on formation of laminated sheets by the application of necessary heat and pressure to these goods. They also pleaded that this reacting mixture manufactured by them could not be stored for the purpose of marketing. The Assistant Collector in his finding conceded that mixture namely solution of the resins and water was not stable. However, he held that merely because solutions are not stable did not mean that the resins produced were not goods and that if some stabiliser was used to lower down the continuous reaction with the addition of retarder or stabiliser, the same could be put in the market for the purpose of sale. The Collector (Appeals) relying on- these findings of the Assistant Collector has observed as under :- "That, therefore, an intermediate production order to be excisable as a product, must be a product known to the market or commercial community; of course, the manufacturing process of that product must be complete. In other words, if the intermediate product which comes into existence is as such a complete product known to the market it is excisable. But if something more is to be done on the product or with reference to the product to bring it into a form known to the commercial community, it cannot be treated as excisable. The appellants also aver that the intermediate reacting mixtures are not fully manufactured goods and that the chemical reaction therein is complete only when the treated papers are in hydraulic press under high pressure and temperature and that the same are not marketable and for marketing them further processes are to be carried out including addition of stabilizer or retarder." He has held that there is no dispute that the products were used for the manufacture of plastic laminated sheets, although in the process at the first Stage, synthetic resin was formed as an intermediate product in unstable and non-marketable condition and that as such the product namely resin mixture could not be considered excisable under T.I.15A(1) CET.4. The learned JDR for the Department pleaded that the goods manufactured are resins which are condensation products and are covered under T.I. 15A(1) and stated the admitted position is that synthesised product is resin. He further pleaded that T.I. 15A corresponds to entry 39.01/06 of CTA and Explanations given under T.I. 15A also correspond to those given under the said

Tariff Entry in the Customs Act. He pleaded that the Tribunal in the case of Collector of Customs, Cochin v. M/s. Premier Tyres Limited, Kalamassery, Alwaye (Kerala) 1985 (20) ELT 124, has held as under :- "It is clear from the above quoted passages read with the CCCN Explanatory Notes (supra) that resols and polyisobutylene are recognised as resins or substances which have polymerised up to a stage and which on further polymerisation, result in more fully cross-linked resins." His plea is that the goods manufactured being called resin being polymerised products fall within the ambit of 15A(1). He has pleaded these have shelf life, even though short, and these, therefore, should be considered as goods for the purpose of levy of Central Excise duty.

5. The learned advocate for the respondents stated that Collector (Appeals) has held the product manufactured by the respondents to be not goods for the purpose of levy of Central Excise duty for very valid reasons given in his Order. He pleaded that they were, at no stage, informed that the goods manufactured by respondents are resols as now pleaded by the appellants and stressed that these are merely solutions of phenolic formaldehyde etc. He pleaded that it has been clearly stated in the impugned order that for the goods to be marketed, some stabilizer had to be added in view of the presence of reactive groups in the mixture of resin manufactured and that in as much as no stabilizer had been added to the goods which are sought to be charged to duty, these could not be held to be marketable. He stated that levy of duty has to be on goods in the condition in which these have been manufactured and that no evidence had been produced by the Department that these are resols as such and that these are understood in the commercial parlance as resols. He was specifically asked to state, notwithstanding the fact whether the Department had called the goods as resols in the proceedings before the lower authorities, as to whether technically the goods manufactured by the respondents are resols or not. He pleaded ignorance and stated that he is not aware as to whether the goods manufactured were resols or not. He, however, stated even if these are considered to be resols in as much as these are not marketable, no duty can be charged on the same. He cited the following case law in support of his this plea :-Union Carbide India Limited v. Union of India and OtherDunlop India Limited & Madras Rubber Factory Limited v. Union of India and Ors.

3. 1982 ELT W (Ker.) in the case of The Western Indian Plywood Limited v. Union of India and Ors.; PEICO Electronics & Electricals Limited v. Collector of Central Excise & To a specific query from the Bench, he stated that the goods in question can be stored for about 15 days. He also pleaded that the goods were tested after few months of their manufacture and these were found to be in a jelly form and which showed that the goods could not be stored after manufacture.

6. The learned JDR in reply pleaded that for the purpose of levy of duty it was not necessary that the goods should be marketed and that so long as the goods falling under a particular tariff entry are manufactured and notwithstanding the fact that these are captively consumed, the duty has to be charged thereon. In case of MRF Limited v. Union of India and Ors.: 1985 ELT 5, he pointed out, in the case of manufactured rubberised cord warp sheets, the Hon'ble Bombay High Court has held that though admittedly the rubberised cord warp sheets are not put in the market, nevertheless, this is not the relevant consideration for the purpose for not making them liable to payment of duty. He pointed out, the Hon'ble High Court has held that since the excise duty is on manufacture of goods and not on the sale thereof and that the fact of a substance produced by the manufacturer at an intermediary stage and not put in the market would not make any difference to the chargeability of the substance to excise duty if it is covered by an item of Central Excise Tariff. He further stated that the Tribunal has held the same view in the case of ILAC Limited, Bombay v. Collector of Central Excise: 1985 (20) ELT 5. He amplified that the goods are manufactured in a batch process and that the manufacture of resols is the first stage of the resin and this stage of manufacture is over with the formation of the resols. The resol or resin manufactured is taken into use separately for the manufacture of laminated sheets. He pleaded that the fact that the goods have been described as self-reacting mixture does not mean that resol had not come into existence and once resol had been formed, notwithstanding the fact that these were not marketed, these are chargeable to duty.

7. Shri D.N. Mehta, the learned advocate by way of clarification added that the Supreme Court has not given a go by to the marketability criteria. He pleaded that at no stage it was brought to the notice of the respondents that their product was

resol.

8. We observe that the lower authorities in their Order have described the respondents product as phenol formaldehyde reacting mixture. The respondents, as is seen from the order of the Assistant Collector, had requested the Assistant Collector to supply them the grounds in detail as to how reacting mixtures are covered under 15A(1). The Assistant Collector, however, maintained that there was no dispute about the product used in the manufacture of laminated sheets. The goods manufactured have not been termed as 'resol' as stated before us by the learned JDR for the Department. The respondent's advocate also could not tell us from his knowledge as to what was manufactured was resol or not. Notwithstanding the above, we observe that in the appeal filed, the appellants have given details of the manufacturing process and the chemistry of the reaction and use to which the manufactured goods in question are put. These submissions have not been challenged by the respondents. The appellants in this regard have given extracts from the Standard Reference Books. We find that the phenolic resin occurs in three stages as mentioned in the Annexure 'B' of the appellants appeal and for convenience of reference are set out below :- 1. Resol or A-Stage (beginning of condensation); the resin as fluid, soluble, and still contains much water 2. Resitol or B-Stage (continued condensation, slight cross-linking) insoluble, rubber 3. Resite or C-Stage (final condition of the cured product): infusible and insoluble." We observe that in the Glossary of Chemical Terms : Second Edition : Clifford A. Hampel, Consulting Chemical Engineer and Gessner G. Hawley, Editor: Condensed Chemical 'Dictionary Phenol formaldehyde resin are described as under :- "Polymerization occurs in three steps or stages. The first (A-Stage) is an alcohol-soluble liquid, the second (B-Stage) is semi-solid and less soluble; the third (C-Stage) is hard, cross-linked solid. The A-Stage form is called a resol." In another case, the Bench took note of the different stages of manufacture of phenol formaldehyde resin in the case of Bakelite Hylam v. Collector of Central Excise, Hyderabad : 1986 (24) ELT 643 and these have been described in the Order as under :- "A-Stage" - An early stage in the reaction of a thermosetting resin in the phenol formaldehyde type in which the material is still fusible and wholly soluble in alcohol and acetone. Such resins are used for impregnating papers and fabrics for laminating.

"B-Stage" - An intermediate stage through which a thermosetting synthetic resin of the phenol formaldehyde type passes during the process of cure and in which the material softens when heated and will swell when immersed in liquids such as acetone or alcohol, but yet will not entirely melt or dissolve. The resins in thermosetting moulding compounds are usually in this stage.

"C-Stage" - The final stage in the reaction of thermosetting synthetic resin of the phenol formaldehyde type. At this stage the resin is said to be fully cured, and is insoluble in acetone or alcohol and infusible.

Our attention has also been drawn to the term resin as set out in the Book "Glossary of Chemical Terms. The term Resin has been described as under :- "Any synthetic high polymer usually resulting from an addition or a condensation reaction, e.g. polystyrene, phenolformaldehyde. Such substances were originally called resins probably because some early types, such as coumaroneindene, physically resembled natural resins.

Thus, the term synthetic resin, though still wide used, is strictly inappropriate, since the substances are polymeric compounds rather than mixtures of simple substances, Characteristic properties of such polymers are insolubility in water, resistance to attack by chemicals, high electrical resistivity and a smooth hard finish.

Most types can be readily extrude, machine and molded, and some can be extruded into filaments and woven into fabrics. There is definite line of demarcation between thermoplastic (heat-softening) and thermo-setting (cross-linked, heat stable) resins. One major group having rubber like properties is called elastomers." "Resinoid - A term used by materials engineers to denote a liquid, sernisolid, or solid thermosetting resin or plastic, especially those used for bonding agents in such composites as abrasive wheels, plywood etc. It also includes semi-polymerized (heat-bodied) linseed oil and A-Stage phenol formaldehyde resins (Also called resols)." From what has been stated before us which has not been controverted is that out of the raw material inputs after the reaction has proceeded to the A-Stage, formation of phenol formaldehyde resin described as phenol formaldehyde reacting mixture a condensation product does take place and the

same is used in the manufacture of laminates after processing it further when polymerisation of the same to the 'B' and the 'C' Stage is reached. It is not the case of respondents that no condensation process takes place or the resin does not come into existence. If resin had not come into existence then the mixture produced could not have been used for further stages of manufacture of laminated sheets. As we have observed in the case of Bakelite Hylam and it was admitted position in that case that for the laminated sheets to be manufactured the phenolic resin has necessarily to be taken in the process of manufacture from A to B and then to C Stage of polymerization. We observe that the manufacturing process for the manufacture of the goods in question is a standardised one and the end result of the first reaction stage of the raw material inputs as set out in the earlier part of our Order, is the phenol formaldehyde resin in the 'A' Stage.

This 'A1 Stage resin is also described as resol in the technical literature and this has certain specified uses including in the manufacture of laminates. We observe for phenol formaldehyde resin to be used for the laminate sheets, it is essential that 'A' Stage resin should come into existence first and by application of necessary heat and pressure and the use of the required catalysts for further polymerisation the necessary B and C stages are reached in different operations. Thus, the 'A' Stage manufacture of the phenolic formaldehyde resin, which is the case in the present proceedings marks a definite stage of manufacture of resin. Now when the product is required to be used in a particular process it has to acquire a certain capability for that use as otherwise the product will be worthless for the manufacturer. This means that the resol or phenol formaldehyde resin mixture as described by the lower authorities, has acquired a certain definite character as pointed out above. A lot of stress has been laid that the products manufactured are not marketable and not goods for the purpose of levy of duty by the learned advocate for the respondents and he has cited case law in this regard. As pointed out above, the product manufactured has a definite character for a specific use and is technically recognised as resol. No where we find in the technical literature placed before us nor has any evidence been produced by the respondents that the product resol is unstable and not capable of storage even for a short time. What has been pleaded is that the product has a short shelf life. It is a well known fact that in the case of resins there are so many varieties and these

have wide-ranging shelf lives ranging from a few days to a couple of months or even more.

It has not been made out before us that the product is required to be taken into immediate use or otherwise it would be rendered useless or it will cease to be a resin. In fact, it has been pleaded that the product has a short shelf life and has been conceded by the learned advocate for the respondents that it can be kept for as long as 15 days. This would suggest that at that stage itself, it could be sold to a consumer or a buyer if he required the same. The laminates manufactured by the respondents is not manufactured in a single stream operation and the resin mixture as stated earlier is manufactured in reaction vessels in batches. In the nature of things the goods have to be stored for some time before these are taken for next stage of manufacture. In this case, in any case, it has been conceded storage is possible for at least a period of two weeks. In this view of the matter, therefore, it has to be held that the product even though capable of further condensation or polymerization, has reached a definite stage of manufacture for a definite end-use and, therefore, has to be held to be goods. Case law cited by the respondents, therefore, does not help them. Lot of stress has also been laid on the fact that the mixture produced by the respondents is a reacting mixture. We observe that taking into consideration the nature of the material manufactured it is essential that the molecules of resin formed should be capable of further polymerisation for the A Stage phenol formaldehyde resin formed has to be further utilised for further polymerisation into 'C' Stage by application of necessary heat and pressure etc. But it does not mean that the goods produced have not by themselves become an identifiable product. Further in the Tariff Entry 15A(1) CET, the framers of the statute have used technical words and described the products covered under this by their chemical nomenclature. Once the product manufactured answers to the chemical description of the product under this entry, these have to be assessed under this Heading. We find that the goods under reference are recognised technically as Phenol Formaldehyde or resol and considered as resin and it is because of the resinous properties of the same that these are used. The fact that the product in question is stable enough to have a shelf life, albeit, a short one, as set out above, clearly shows that these are goods for the purpose of levy of Central Excise.

duty. As pointed out by the learned JDR, courts have clearly said that not being brought to market is not a criterion for excisability. We observe the Hon'ble High Court of Delhi in the case of J.K. Synthetics Limited v. Collector of Customs, Delhi : 1985(21) ELT 410 (Delhi) have held in the case of Polymer Chips that moment the manufacture takes place, the excise duty is immediately attracted and that once it is held that polymer chips are manufactured and covered under the entry plastics, there would be no escape from the conclusion that the excise duty will be immediately attracted inspite of the fact whether polymer chips are actually brought to the market to be bought or sold. We have held that the product manufactured by respondents falls under 15A(1) and the fact that these are in the case of the respondents not marketed or sold makes no difference for the purpose of levy of duty as held by the Hon'ble Courts. In view of the above, we hold the Order of the Collector (Appeals) is not maintainable and we set aside the same and uphold the levy of duty under 15A(1). The appeal is allowed in above terms.

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