Commissioner of Central Excise Vs. Hardcastle and Waud Ltd.

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SooperKanoon Citation : sooperkanoon.com/31849

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-11-2003

Reported in : (2003)(162)ELT845Tri(Mum.)bai

Judge : J Balasundaram, S T C.

Appellant : Commissioner of Central Excise

Respondent : Hardcastle and Waud Ltd.

Judgement :
1. The application for rectification of mistake arises out of the final order of the Tribunal [2003 (152) E.L.T. 63 (Tri. - Mumbai)] holding that the material on record is not sufficient to establish that the goods in question are otherwise those that declared, and hence, setting aside the impugned order and allowing the appeals.

2. It is brought to our notice by the ld. SDR that the Chief Chemist has clearly stated in his report dated 28-5-92 that "each is modified phenolic resin and cannot be considered as phenol formaldehyde resin" and that the abstract of the Commissioner's order was furnished to the assessees and the Deputy Chief Chemist's report was not the only material on the basis of which, the authorities below held that the product is not phenol formaldehyde resin as claimed by the assessee. He therefore, prays that the impugned order may be upheld, as the chemical reports are sufficient to establish that the goods are other than as declared.

3. We have perused the records. We find that both the orders-in-original referred to the Chief Chemist's report which although obtained after the issue of the show cause notice was furnished to the assessee, as seen from the fact that in one of the orders it is clearly stated that their request for abstract of the report of the Chief Chemist was given to them, and in the second case the goods were re-tested at the request of the appellants themselves and the Chief Chemist's report was available with the appellant. On reading the reports of the Chief Chemist, it is clear that the issue stands decided against the assessee and no material has been put forth from the assessee that the goods are phenolic formaldehyde resins.

4. In these circumstances, the finding that the goods are not phenolic formaldehyde resins requires to be accepted. Accordingly, while allowing the application for rectification of mistake, we hold that there is no ground to interfere with the orders of the authorities below and accordingly uphold the same and reject the appeals.