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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-29-2003

Reported in : (2004)(92)ECC476

Judge : S K Gowri, K Kumar

Appellant : Konkan Kemistar

Respondent : Commissioner of Central Excise

Judgement :

1. The question that arises for consideration in this appeal is the classification of synthetic resin adhesive manufactured by the appellant. The appellant was engaged in the manufacture of polyvinyl acetate emulsion and synthetic resin adhesive. The department was of the view that each of these products is classifiable in heading 3905 of the Central Excise Tariff and, for purposes of extending the exemption contained in notification 175/86, clearances of both these products was to be added in calculating the slab exemption of Rs. 20 lakhs. The assessee's contention was that synthetic resin adhesive is classifiable in heading 35.06 of the Tariff, while accepting classification of polyvinly acetate emulsion in heading 39.05 of the tariff. Therefore, by application of the proviso under the first paragraph of notification 175/86, slab exemption of Rs. 20 lakhs for clearance fro one item and Rs. 10 lakhs on another item would be available. Adjudicating on the notice issued to the assessee demanding duty by denying the exemption, the Assistant Collector noted that the assessee had cleared both the goods in bulk and not presented as glues in container of one kilogram or less and hence both

products would be classifiable in heading 39.05.

he said that however it has subsequently been clarified that mode of presentation for sale is not a deciding factor regarding classification of the product. "As per HSN chapter Note product should have resin contents in order to classify the same under Chapter No. 3506 of C.E.T." He also noted that the classification claimed by the assessee had been approved and hence benefit of the exemption in cases where the products are falling different chapter would be available.

2. The department appealed this order. The commissioner (Appeals), relying on a circular 47/90 issued on 31.8.1990 under Section 35B of the Act, held that both the products were classifiable in heading 39.05, set aside the Assistant Collector's order and allowed the department's appeal. Hence this appeal.

3. The first contention of the counsel for the appellant is that the demand for duty cannot be sustained in view of the fact that the classification list has been approved is not tenable following the amendment made in Section 11A of the Act in 2001, providing that perior approval of classification list is not a bar to recovery of duty short levied or not levied. It is contended on merits that the synthetic resin adhesive was in fact classifiable in heading 39.05 of the tariff and had been so cleared earlier. It was only subsequent to the issue of the circular of the Board that action was taken to change the classification. The Board's circular 47/90 issued under Section 37B of the Act permits that preparations of polymers in any of the heading 3901 to 3913 specifically formulated for use as glues or a adhesive products of these headings put up for retail as glues or adhesive not exceeding net weight of 1 kilogram are excluded from chapter 39.05 and fall for classification in heading 35.06. It is not the appellant's case that, it cleared the goods in packing of less than one kilogram or specially formulated for use as glues or adhesive. There is therefore no ground for interference in the Commissioner (Appeals) order.