Carbon Everflow Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-02-2003

Judge : S T Gowri, K Kumar

Appellant : Carbon Everflow Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant imported 12 consignments of pitch. Of these, eight consignments were cleared for home consumption, and the remaining four transported in bond to a public bonded warehouse appointed at Nasik. In the into bond bills of entry that were filed for these four consignments, the appellant classified the goods in heading 2708.19.

The ex-bond bills of entry that were filed for their clearance of the goods from the bonded warehouse at Nasik claimed classification in sub heading 2708.19. The goods were cleared from the bonded warehouse at Nasik on payment of duty applicable to goods of sub heading 10.

Subsequently, it filed a claim for refund of the duty that was paid on the ground that the goods were rightly classifiable in sub heading 19 and not in sub heading 10. This claim was rejected by the Additional Commissioner on the ground that the claim filed by the appellant in respect of the goods cleared at Bhaindar on the same ground has been dismissed by the Assistant Commissioner of Customs, and it was not open to change the classification which according to him was correct.

This order having been upheld by the Commissioner (Appeals), the order is before us.

2. Heading 27.08 covers pitch and pitch coke, obtained from coal tar or from other mineral tar. Sub headings 11 and 19 are both for pitch obtained by blending with creosote oil or other coal tar distillates and sub heading 19 is for others. What is required to be determined is therefore whether the pitch in question has been obtained by blending with creosote oil or other oil, or not. One sample each of the imported material sent by the Customs at Mumbai to the Indian Institute of Technology (IIT), Mumbai and Steel Authority of India Ltd (SAIL), Ranchi. The report of the IIT, after furnishing such details as distillation temperatures and so on concludes, "The pitch sample contains creosote oil like material with naphthalene and aromatic phenols. These typical of the coal tar distillates, and are not found in petroleum tars.

"The sample is therefore either wholly coal tar pitch from coal carbonisation or blended product with substantial quantity of coal tar distillates or creosote oil. It is certainly not a pure petroleum product." In reply to a question raised by the Assistant Commissioner, the letter goes on to say the chemical composition of the sample in which naphthalene oil cut is stated to be 7% and creosote oil cut stated to be 15% by weight. The report concludes by answering the question whether the sample is obtained by blending with creosote oil, "yes, or it may be wholly coal tar product." This report is very clear that, it is not possible to say whether the sample is taken from a pitch obtained by blending creosote oil or other coal tar distillate or not.

It therefore does not advance the appellant's claim.

3. The report of the principal research manager of SAIL is categorical that "Critical examination of the results indicate that the sample of the pitch is a coal, tar based product and is obtained from the distillation of coal tar." 4. The appellants relies upon a certificate issued by Kawasaki Steel Corporation, Tokyo, sent to it by Takenaka Shoten & Co Ltd, Tokyo, the supplier of the goods. This certificate, while confirming that the coal tar pitch exported to the appellant was manufactured by Kawasaki Steel Corporation, however does not offer for any material that would

help in classification of the product. After briefly describing distillation of coal tar, in order to obtain pitch it says, "Coal tar pitch is obtained after distillation of coal tar and by blending with other coal tar distillates." It is therefore of no assistant to the appellant. It is necessary to mention that the appellant by an appeal against the order of the Assistant Commissioner, Mumbai rejecting the claim for refund on the same ground was allowed by the Commissioner (Appeals). The Tribunal, on appeal by the Commissioner against that order, did not accept the Commissioner (Appeals)' finding but remanded the matter for passing a speaking order. The appellant's claim therefore in this regard has not been substantiated.