

Ventron Polymers Limited and Vs. Commissioner of Customs and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-07-2003

Reported in : (2004)(177)ELT753Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Ventron Polymers Limited and

Respondent : Commissioner of Customs and

Judgement :

1. The applications for waiver of pre-deposit of duty of Rs. 48,30,800/- and penalty of equal amount on M/s. Ventron Polymers Limited and duty of Rs. 42,47,020/- and penalty of equal amount on M/s.

Ventron Chemicals Limited arise out of two separate orders involving identical issue, namely, classification of "dimethicone" manufactured and cleared by the applicants herein under CETA sub-heading 3910.00 as "silicones in primary forms" rejecting the assessee's claim for classification as medicaments under CETA sub-heading 3003.20. The period of the demand in the first case is September, 1996 to April 1998 while in the second case it is April, 1995 to September, 1996 and the show cause notice in each case is dated 27/04/2000.

2. The classification under Chapter heading 39.10 has been confirmed on the basis of the Tribunal's decision in the case of CCE, Calcutta v.Metroark Private Limited 1999 (109) ELT 282 wherein the classification of dimethicone is held to fall

under CETA sub-heading 3910.00.

3. We have heard both sides. The applicants had been filing classification declarations from time to time during the period in dispute in which they had set out the manufacturing process as under: "Silicon oils of various grades mixed together under room temperature to obtain a pre-determined viscosity further it is filtered and packed." 4. The process has been found to be correctly described and the Commissioner has accepted the contention of the assessee that the product has prophylactic and/or therapeutic use thus satisfying one limb of Note 2 to Chapter 30 covering medicaments. However, he has held that the non-disclosure of the method of packing, namely, whether the product is packed in bulk or in retail packs, measured doses or for use in hospitals, which would have direct bearing on the products satisfying the second limb of Note 2 to Chapter 30, as suppression on the part of the applicants so as to invoke the extended period on limitation. We see prima facie force in the applicants' submission that the method of packing is relevant only in the case of unmixed products suitable for prophylactic and therapeutic uses and is not relevant for products comprising two or more constituents which has been mixed together for such use and once the Commissioner has mainly relied upon the Tribunal's order in the case of CCE, Calcutta v. Metroark Private Limited cited supra for classification under Chapter 39, no suppression, prima facie, can be attributed to the applicants as the Tribunal's decision has been rendered well after the period in dispute in the present cases. Therefore in the absence of any knowledge on the part of the applicants that their product was not medicaments falling under Chapter 30 but silicone in primary form under Chapter heading 39.10, we hold that the demands in both cases are prima facie barred by limitation and on this ground we waive the pre-deposit of duties and penalties and stay recovery thereof pending these appeals.

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