

Collector of Central Excise Vs. Fact Engineering Works

Collector of Central Excise Vs. Fact Engineering Works

SooperKanoon Citation : sooperkanoon.com/3300

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-17-1987

Reported in : (1988)(35)ELT480TriDel

Appellant : Collector of Central Excise

Respondent : Fact Engineering Works

Judgement :

1. The Government by Notice F.No. 198/3/229/82-CX.5, dated 19.8.1982 issued under Section 36(2) of the Central Excises and Salt Act, 1944, wants to review the order of the Appellate Collector of Madras, No.40/82(B), dated 2.3.1982, because it considers that when steel pipes are coated with cement internally and with weld mesh and cement externally, it leads to the emergence of a new product, cement coated pipes, which have a "name, characteristic and use" distinct from those of the steel pipes, and that such a manufactured product viz. cement coated pipes, is liable to be classified under the residuary Item 68 of the Central Excise Tariff. This is completely incorrect said the learned counsel for M/s. FACT Engineering Works.

2. The learned SDR, however, supported the Government's notice vehemently.

3. The steel pipe coated with cement is nothing but a cement coated steel pipe. The government itself says that what emerges is a cement coated pipe, but it does not say what kind of cement coated pipe. The answer is already in the records, they are cement coated steel pipes.

There is no such thing as a cement coated pipe, there may be cement pipes or asbestos cement pipes. But cement coated pipes are totally non-products and cannot be found anywhere. We note that these pipes are cement coated steel pipes and cement coated steel pipes are nothing but steel pipes coated with cement. They may have a weld mesh externally as this mesh is useful to reinforce the concrete coating which is liable to be broken and damaged, whereas the internal coating is already protected by the steel body of the pipe and, therefore, needs no steel weld mesh as the outside of the pipe. But to say that a cement coated steel pipe is a new product shows insufficient understanding and is like saying that steel pipe painted with black synthetic enamel to protect it from rust etc. is a new product, a painted pipe. A painted pipe it may be, but it is a painted steel pipe. Whether the steel pipe is painted with synthetic enamel, or coated with cement or any other protective coating, it always remains a steel pipe. Its nature, character and name as a steel pipe cannot be taken away by the simple process of coating. It also remains a pipe for the conduction of fluids like water. A steel pipe is strong and lasts a long time, but it is susceptible to attacks of corrosion if it comes into contact with water. By coating it with cement coating or some other coating, the steel body is insulated from direct contact with moisture and this lengthens the life of the steel pipe. The steel pipe becomes a longer-lasting steel pipe, a better steel pipe, a rust-resistant steel pipe. If anything the coating makes it more a steel pipe than less.

Therefore, the cement coating has not led to the emergence of a product different from the steel pipe. The steel pipe remains a steel pipe: there has been no manufacture and no duty can be charged under Item 68.

4. A further weakness in the department's case is that the tariff offers two items : one item of steel pipes and another item for goods not elsewhere specified. It is a fundamental Rule of assessment that a product should be assessed under the heading which covers it most appropriately or with goods to which it is most akin. There can be little doubt that the heading for steel pipes is a better cover than the heading for goods not elsewhere specified. Even if it is a cement coated steel pipe, it is nevertheless a steel pipe, only coated with cement, therefore, as a steel pipe it is better for it to be placed in the steel pipe house, rather than in the house

that is not meant for any specific thing.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com