Collector of Central Excise Vs. Andhra Oxygen (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-09-1987

Reported in : (1987)(13)ECC187

Appellant : Collector of Central Excise

Respondent : Andhra Oxygen (P) Ltd.

Judgement :

1. The Collector of Central Excise (Appeals) Madras by order dated 19-8-1983 held that Carbide Sludge which arose in the course of manufacture by the respondents (appellants before him), was waste matter and not goods and hence not classifiable under Tariff item"68 of Central Excise Tariff. He thus allowed the appeal filed by the respondents before him. The Collector of Central Excise, Guntur challenges this order before this Tribunal.

2. The respondents in response to the notice of date of hearing have requested for decision on merits on the basis of arguments advanced by them in their written submissions. We have therefore, heard Smt.

Chander for the appellants - Collector of Central Excise, Guntur and perused the available papers.

3. Smt. Chander on hearing dated 3-4-1987 had prayed for time to place literature before the Bench to show that the production in question - Carbide Sludge is marketable and is sold as such. In that connection, she has filed a letter dated 4-5-

1987 from the respondents addressed to the Superintendent of Central Excise, Mor VII, IDO II, Vishakhapatnam.

She submitted that according to this letter, Carbide Sludge is lime and would, therefore, be goods within the meaning of Central Excise law and therefore, liable to duty under Tariff Item 68. She submitted that Collector (Appeals) was in error in holding that Carbide sludge was not goods because according to her, it fulfills the three tests of being goods i.e. name, character or use.

She was confronted by the Bench with a decision of Delhi High Court in M/s Modi Rubber Ltd. and Anr. v. Union of India and Anr. 1987 (29) LLT 502 (Delhi) regarding the correctness of her submissions. In this decision, the Delhi High Court inter-alia held that waste and scrap though capable of fetching some price, cannot be criterion for event of manufacture. Further where the intention is to charge the waste and scrap to duty it is specifically so presided in tariff entries. Smt.

Chander submitted that this decision of the Delhi High Court had not taken into consideration the Supreme Court decision in Khandelwal Metal & Engineering Works and Anr. etc. v. Union of India and Ors. 1985 (20) ELT 222 (SC). She submitted that in this decision, the Supreme Court had held:- "Even if the duty referred to in section 3(1) of the Tariff Act, 1975 is regarded as in the nature of a countervailing duty, the brass scrap imported by the appellants would still be liable to the levy of that duty. The reason is that scrap or waste is a by-product of manufacture and is an integral part and an inevitable incident of the manufacturing process. Brass scrap is manufactured or happens to be manufactured in India. It is well-known as a marketable commodity both of Indian and foreign origin. The brass scrap produced in India must receive protection by the imposition of a countervailing duty on imported brass scrap." and that in view of these observations of the Supreme Court, the Delhi High Court decision was per incuriam.

In letter dated 4-5-1987 of the respondents, the character of Carbide sludge is seems to be as follows - (a) "The Carbide slug ($Ca(OH)_2$) is nothing but a waste material discharged into the drain from the generator (Container) where acetylene gas is manufactured (CaC2 2H_o - C_H_ + Ca(CH)_) along with water so that the container may be free for taking a fresh charge of Calcium Carbide. This waste product at the time of discharge is in a semi-liquid state which on being drained into pits made in the earth for sedimentation, settles at the bottom of the pits as sludge and the sludge water flows away along the drain. This sludge, which is nothing but an effluent, has to be collected and removed from time to time to prevent the pits from being checked up and to keep the factory premises clean and free from pollution.

(b) "Very meagre quantity is being sold for white washing as 'Lime' and the rest is lying as a waste. You can find heaps of Carbide sludge around 3 to 4 thousand tonnes stagnated in our premises due to lack of market. Moreover substantial quantities are blown away with the wind and absorbed in the earth as it is kept in the open area in heaps." "Refuse of scum thrown off during the process of manufacture, cannot, by any stretch of imagination, be considered as a by-product, merely because such refuse of scum may fetch some price in the market".

From the impugned order, we find that the Collector (Appeals) held that the contention of appellants that it is a waste product had not been controverted by Revenue which was necessary if Revenue claimed classification of the product under a particular item, in this case Tariff item 68. We also observe that Collector (Appeals) inter-alia followed a judgment of the Bombay High Court in Indian Aluminium Co.

Ltd. and Anr. v. A.K. Bandyopadhyay and Ors. (1980 ELT 146). From the written submissions of the respondents, it appears that carbide sludge is only waste arising in the course of manufacture of acetylene gas. It does not appear to have marketability though there have been some stray cases of sale. There is nothing to disbelieve the respondents when they say that it is only an affluent and waste. Considering all this, we are not inclined to interfere with the orders passed by the Collector (Appeals) and we therefore, dismiss the appeal.

We make it clear that it would be open to Revenue to prove by credible evidence, if that be available, that carbide sludge is goods as per tests laid down by law and this decision would not act as a fetter, should such credible evidence be available.