Commissioner of Customs Vs. V.K. Steels Pvt. Ltd., V.K. Mehta,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-19-2004

Reported in : (2004)(178)ELT494Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Customs

Respondent : V.K. Steels Pvt. Ltd., V.K. Mehta,

Judgement :

1. When these matters were called. Respondents were absent. Heard the Ld D.R. and considered the material on record and it is found that: (a) the Ld Commissioner, while adjudicating the case, has considered the test report for the consignment of M/s Hico Products Ltd, where there was an opinion avail that polystyrene wide spec was not known terminology. The opinion of University of Bombay, Department of Chemical Technology also confirmed that there was no scientific basis or any technical definition for the term 'wide spec' for any commonly used grades of Polystyrene. The University further opined that it may not sound appropriate to designate HIPS (wide spec) since HIPS was having specific properties. The Indian Institute of Technology, Bombay, vide their interim report reference, termed all the samples belonging to 'wide spectra category' and professor M.K. Trivedi, when contacted and requested to give his opinion with regard to polystyrene imported, opined that 'wide spec' was not a scientific term that could possibly be a trade term. It was also informed that there was a term 'poly dispersity' which is applicable to all plastic as regards the degree of

distribution to all molecular weight of a polymer sample. In spite of this opinion, the Commissioner dropped the proceedings for under valuations initiated.

Hence these appeals.

(b) When there is positive material on record that 'wide spec category of polystyrene, is not known in the technical field and therefore it was necessary to establish, as to how the importers had obtained on commercial terms, a declaration and supply of the goods, declared to be of `wide spec' quality and therefore cheaper in prices. Since this aspect of the matter has not been gone into, the Commissioner was not correct in dropping the proceedings. If the term of 'wide spec' is not known in technology, it was imperative for the Commissioner to have established the existence. For this purpose, the matter is required to be reheard and issues redetermined.

(c) The orders are therefore required to be set aside and the matters to be remanded to the Commissioner who should hear the appellants and thereafter redetermine the issues.