

Cce Vs. Bharat Plastics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-21-2004

Reported in : (2005)(118)LC505Tri(Mum.)bai

Judge : A Wadhwa, S T S.S.

Appellant : Cce

Respondent : Bharat Plastics

Judgement :

1. The dispute in the present appeal of revenue is as regards the correct classification of PVC lump waste and PVC film waste and also the applicability notification No. 53/88 dated 1.3.88.

I have considered the appellants contentions. I have also gone through the order of the JAC. Waste, in the appellants case, is arising at different stages of manufacturer of PVC film starting with PVC resin, as raw material. Cuttings of films, however, emerge at the time of trimming of the uneven edges of the PVC film. Both these types of wastes are covered under the chapter heading and sub-heading 3915.90. As per Sr. No. 19 of Notification No. 14/92, dated 1.3.1992 as amended by plastic are chargeable to Nil rate of duty if these arise from duty paid goods falling within chapter 339 of any other chapter of the schedule to Central Excise Tariff Act, 1985 or CVD paid goods under Section 3 of the Customs Tariff Act, 1975. In the appellant's case waste, paring and scrap arise out of the starring material, i.e., PVD resin, which the appellants contend is duty paid. As such, the

waste parting and scrap in the appellant's case would attract nil rate of duty in terms of Sr. No. 19 of the Table to Notification No. 14/92 as amended.

Although they are availing Modvat of duty paid on PVC resin, availment of Modvat will not take away the duty paid character of the goods and make them non-duty paid. Had the intention been to deny exemption to waste, paring and scrap where input credit has been availed of then in the column of condition another condition "and no Modvat on input has been availed of would have been provided in the Notification, which is not there. Accordingly, condition of the Notification against Sr. No. 19 is satisfied and the benefit of nil rate of duty is available to the appellants.

It is also seen that the Commissioner (Appeals) C. Excise, Mumbai has passed similar order in the case of appellants vide OIA No. GS/2000/SRT/Adj.28/94/CLPL dated 13.6.1994 of Asst. Commr., C. Excise, Div-III, Surat and allowed the benefit of nil rate of duty to the appellants.

In view of the above discussion, the Appellant's Appeal is accepted and the Asst. Commr.'s order is set aside.

3. It is seen that the reference to the earlier order of Commissioner (Appeals) is in the case of Clarity Enterprises. Revenue had appealed against the said decision which was rejected by the Tribunal as . Ld. DR has placed a letter dated 19.10.2004 from the Joint Commissioner of Central Excise, Surat on record, which is to the effect that the Tribunal order rejecting the revenue appeal in the case of Clarity Enterprises has been accepted by the department. In as much as the issue is covered by earlier decision of the Tribunal, which stands accepted by the revenue, we do not find any reasons to take a different view. Accordingly, we reject, the appeal filed by the revenue.

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