Oswal Petrochemical Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-09-2004

Reported in : (2005)(118)LC346Tri(Mum.)bai

Judge : J Balasundaram, Vice-President, A M Moheb

Appellant : Oswal Petrochemical

Respondent : Cce

Judgement :

1. After hearing both sides for some time on the stay application, we fond that it was possible to decide the appeal itself and hence proceeded to do so with the consent of both sides after waiving pre-deposit of duty and penalty.

2. The appellants herein are manufacturers of excisable goods falling under Chapters 27, 28, 29 and 39 of the schedule of the Central Excise Tariff Act, 1985. They filed a classification list No. 1/89-90 for various products which was duly approved by the Assistant Commissioner.

The classification was reviewed in respect of certain products except the product in dispute in the present case, viz., carbon black feed stock-dripolene A & B. Show cause notices were issued proposing classification of carbon black feed stock under CET sub-heading 2707.90 instead of 2713.30 as claimed, and proposing recovery of differential duty on the above basis (the appellants had paid duty at the rate of 5% ad valorem Rs. 175/per MT, whereas the department alleged that the product attracted duty at the rate of 15% ad valorem). The appellants replied to the show cause notice and also sought copies of the test reports relied upon by the department for the purpose of classification. The notices were adjudicated in October, 2003 without furnishing copies of the test reports to the appellants and also without hearing them. The Deputy Commissioner confirmed the demand of Rs. 1,73,58,094/- raised in the notices and also imposed a penalty of Rs. 25,000/- under Rule 173Q. Aggrieved by this order, the assesses preferred an appeal along with stay application to the Commissioner (Appeals) who vide interim order dated 31.3.2004 directed pre-deposited of the entire duty amount. Application for modification was dismissed and the appeal was dismissed for non-compliance vide the impugned order. Hence this appeal.

4. We find substance in the plea of the appellants that relevant test for determining classification of the product in dispute under chapter heading 27.27, viz. as to whether the weight of the aromatic constituents exceeds that of the non-aromatic constituents, has not been carried out in spite of sample being drawn on 18.11.1992 for this purpose. We also note that there is no finding on the availability of the benefit of notification 75/84 dated 1.3.1984 which is inter alia available to carbon black feed stock intended for use as industrial feed stock in the manufacture of carbon black, although such benefit was claimed in the classification list itself. This aspect assumes importance particularly in view of the fact that the chemical examiner has stated that the product is A & B dripolene which is a synonym of carbon black feed stock and the assessee is using it only for the manufacture of carbon black. Both the aspects, viz. classification as well as eligibility of the product in dispute to the benefit of exemption in terms of notification 75/84, are required to be decided afresh. We, therefore, set aside the impugned order and remand the case to the adjudicating authority for fresh decision after extending a reasonable opportunity of hearing to the appellants.