

Cce Vs. Perfect Refractories

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-2005

Reported in : (2005)(185)ELT163TriDel

Judge : A T V.K., P Bajaj

Appellant : Cce

Respondent : Perfect Refractories

Judgement :

1. In the above captioned appeals, the issue involved is common and as such, are being disposed of by this common order. The controversy in these appeals relates to the classification of Acid Resistant Clay bricks manufactured by the respondents. The learned Commissioner (Appeals) had classified these goods under Chapter heading 6901 for the period prior to 14.5.97 and after expansion of Chapter heading, under Chapter heading 6901.10. The Revenue has contested this classification by asserting that since acid resistant bricks also fall under the category of fire clay bricks, are classifiable under Chapter sub heading 6902.90. If the classification found by the Commissioner (Appeals) is held to be legally correct, in that event, the respondents are entitled to benefit of Notification No. 8/96 and No 5/97 for exemption from payment of duty, otherwise not.

2. The learned SDR has contended that the bricks manufactured by the respondents are in fact fire clay bricks and not simple clay bricks and as such, are classifiable under Chapter heading 6902 attracting duty at the rate of 15% ad-

valorem. The impugned orders in all the appeals deserve to be set aside and the orders in original which are in favour of the Revenue, deserve to be restored.

3. On the other hand, the learned Counsel has reiterated the correctness of the impugned order and referred to the various reports of the Chemical Examiner who conducted the test of the bricks in question and also the end use of the same for substantiating the impugned order.

4. We have heard both the sides and gone through the record. We find that Chapter heading 6901 relates to the classification of bricks, blocks, tiles and other ceramic goods of siliceous earths and its sub heading 6901.10 speaks of clay bricks other than fire clay bricks.

Whereas Chapter heading 69.02 relates to the classification of Fire Clay bricks. The learned Commissioner (Appeals) has also referred to the HSN Notes of both these chapter headings in the impugned order. In order to ascertain if the acid resistance clay bricks manufactured by the respondents could be said to be fire clay bricks or not, main reliance has to be placed on the reports submitted by the various laboratories who had given the details of the properties contained therein. The respondents, before the Commissioner (Appeals), as we find from the record, had produced (i) certificate of Central Glass and Ceramic Research Institute Khurja giving analysis of samples of both unfired and finally manufactured Acid Resistant Clay bricks, (ii) CGCRI's Test certificates dated 29.10.98, 10.11.98, 5.3.2001 and 7.3.2001/23.3.2001 in respect of various types of clay bricks. They had also submitted report dated 9.7.2001 of the Chemical Examiner, Central Excise Revenue Control Laboratory. From all these reports, it is quite evident that Acid resistance clay bricks manufactured by the the respondents could not be termed as fire clay bricks. The process of manufacture carried out by the respondents had also been taken note of by the learned Commissioner (Appeals), besides the end use of the bricks which was for lining of chemical storage tanks etc. No evidence has been adduced by the Revenue for contradicting the reports and certificates of the laboratories as detailed above submitted by the respondents. Therefore, in our view, from these certificates and reports of various laboratories, detailed in the impugned order, the mode and process of

manufacture, characteristics and percentages of the raw materials used, i.e. siliceous earths, alumina, etc. and the end use, the Commissioner (Appeals) has rightly/correctly arrived at the conclusion that the acid resistant clay bricks produced by the respondents could not be classified as fire clay bricks under Chapter heading 6902 of the CETA. This conclusion also finds corroboration from the comparative study of this chapter heading and the corresponding HSN notes.

5. Mere wrong classification of the goods in question by the respondents at one stage, did not operate as estoppel/res-judicata against them for claiming the classification under the correct tariff heading/sub heading of the CETA. The impugned orders of the learned Commissioner (Appeals) in this regard in all the appeals are perfectly valid and we do not find any illegality in the same and as such, are affirmed. The appeals of the Revenue are dismissed.

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