Cc Vs. Momaya Capacitors

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-15-2005

Reported in : (2005)(101)ECC385

Judge : A Wadhwa, N T C.N.B.

Appellant : Cc

Respondent : Momaya Capacitors

Judgement :

1. The dispute is about classification of Phenyal Xylyl Ethane (Nisseki Condenser Oil-S). The Deputy Commissioner under his Order-in-Original dated 31.1.97 held that the correct classification would be under Customs Tariff heading 3824.90. In appeal, Commissioner of Customs (Appeals) (No. 481/99 MCH) reversed the classification and accepted the respondent's plea for classification under sub-heading 2902.90. The present appeal of the Revenue seeks restoration of the classification approved under order in original.

3. Heading 2902.90 relates to "Cyclic Hydrocarbons", while heading 3824 relates to "Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included".

4. Both sides are relying on note 1(b) to chapter 29. That note reads as under. - "1. Except whereas the context otherwise requires, the headings of the Chapter apply

only to: (b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (Chapter 27); IT IS SEEN FROM THE WRITE UP SUBMITTED BY THE PARTY FROM THE SUPPLIER M/S MITSUBISHI CORPN. THAT THE OIL UNDER REFERENCE IS CONSIST OF 4 ORGANIC CHEMICAL WITH SAME MOLECULAR FORMULA ($C_{16}H_{18}$) AND SAME MOLECULAR WEIGHT. THEREFORE THEY ARE ISOMERIC MIXTURE OR CYCLIC HYDROCARBON BY VIRTUE OF CHAPTER NOTE (b) OF CHAPTER 29, IT MERITS CLASSIFICATION UNDER CHAPTER 29 AS CYCLIC HYDROCARBONS. "The Order-in-Appeal passed by the Commissioner (Appeals) is not legal and proper for the following reasons: 1. The 4 constituents of the imported goods namely, Phenyl Xylyl Ethane are not isomers of a single compound, whereas, they are isomers of two different compounds namely, Phenyl Xylyl Ethane & Phenyl Ethyl Phenyl Ethane. Therefore, the goods fall out of the goods specified in Chapter Note 1(b), which reads as follows: "Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereo isomers), whether or not saturated (Chapter 27)".

2. The Commissioner (Appeals) failed to notice that the goods are cyclic hydrocarbons and not acyclic hydrocarbons.

3. T.O. No. 17 dated 1.7.98 indicates that the 4 constituents in the imported product are not the isomers of the same organic compound".

7. It is clear from the note 1(b) reproduced earlier that heading covers mixtures of organic compound "except mixtures of acyclic hydrocarbon isomers". It is clear from the technical opinion of the Chief Chemist that the item is cyclic hydrocarbon. The note does not exclude cyclic hydrocarbons from heading 2902. Only "mixtures of acyclic hydrocarbon" are excluded. Therefore, the present appeal is not right in relying on the fact that the item is not acyclic hydrocarbon, because that only goes in favour of classification under 2902. Thus, note 1(b) supports the classification under 2902. The item is, admittedly, hydrocarbon since its composition is $C_{16}H_{18}$. Heading 2902 is specific to "cyclic hydrocarbon". The Commissioner was

therefore, right in treating the item as classifiable under heading 2902, being "cyclic hydrocarbon". The Commissioner has also noted in his order that the assessee had submitted that there was an earlier order-in-appeal No. 742/97 MCH dated 30.12.1997 in support of classification under heading 2902. The present appeal does not dispute this.

8. In the above facts and circumstances, we find no error in the classification ordered by the Commissioner. The appeal fails and is rejected.