

Commissioner of Central Excise Vs. Consumer Plastics Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-26-2005

Reported in : (2006)(194)ELT214Tri(Mum.)bai

Judge : J Balasundaram, Vice-, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Consumer Plastics Pvt. Ltd.

Judgement :

1. The respondents herein who are engaged in the manufacture of goods falling under Chapters 15, 29 and 39 of the Schedule to the Central Excise Tariff Act, 1985, cleared a particular quantity of epoxidised oil which is ultimately used as plasticisers in the plastic industry, during the period May to October 1995, without payment of duty by claiming classification under CET sub-heading 1508.90 attracting nil rate of duty. The department was of the view that the item was epoxidised plasticiser under CET sub-heading 3812.00 attracting duty @ 20% and hence issued a show cause notice proposing recovery of Rs. 70,948/- (Rupees seventy thousand nine hundred forty-eight only) and proposing imposition of penalty. The Assistant Commissioner held that the assessee had admitted indirectly that their product was epoxidised plasticiser classifiable under CET sub-heading 3812 00 and hence confirmed the demand and also imposed a penalty of Rs. 10,000/- (Rupees ten thousand only). The order was set aside by the Commissioner (Appeals). The Assistant Commissioner also held that the assessee had "unnecessarily made submission by stating that epoxidised oil is

rightly classifiable under CET sub-heading 1508.90 when he was required to prove that item epoxidised oil cleared by them was not epoxidised plasticisers meant for plastic industry". The Commissioner (Appeals) set aside the demand and penalty holding that there was no admission by the respondents and further holding that there was no material available to establish that what was cleared was epoxidised plasticisers under Chapter Heading 38.12. Hence this appeal by the Revenue.

3. We find that the HSN Explanatory Notes to Chapter 15 state that epoxidised oil obtained by treating vegetable oil by reaction in the presence of a catalyst, although finding use as plasticisers or stabilisers, will remain in Chapter 15. Chapter Heading 38.12 covers compound plasticisers for rubber or plastics, not elsewhere specified or included, while Chapter Heading 15.08 covers inter alia animal or vegetable fats and oils, boiled, oxidised...or otherwise chemically modified. Since the product in dispute is epoxidised vegetable oil and since HSN Explanatory Notes at page 535 clarify that epoxidised oils used as plasticisers or stabilisers will fall for classification under Chapter 15, we find no reason to accept the department's contention that the product falls for classification under Heading 38.12 so as to visit the respondents with liability to duty and liability to penalty.

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