

Collector of Central Excise Vs. Ceakay Rubber Industries

Collector of Central Excise Vs. Ceakay Rubber Industries

SooperKanoon Citation : sooperkanoon.com/4154

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-1988

Reported in : (1988)(16)ECC52

Appellant : Collector of Central Excise

Respondent : Ceakay Rubber Industries

Judgement :

1. This is an appeal filed by the Collector of Central Excise, Cochin, against Order-in-Appeal No. 102/83(C) dated 23.8.1983 passed by the Collector of Central Excise (Appeals), Madras, whereby he allowed the appeal filed by Ceakay Rubber Industries (respondents in this case), both on the issue of limitation and on the merits of the dispute. In so far as the merits were concerned, the Collector (Appeals) found that masticated rubber made by the respondents out of natural rubber by the process of mastication was not a product different from natural rubber and that, therefore, masticated rubber was not excisable under the First Schedule to the Central Excises and Salt Act, 1944. The appellant-Collector has challenged this finding as well as the finding on the issue of limitation.

2. We have heard Smt. D. Saxena, S.D.R., for the appellant-Collector and Shri Joseph Kodianthara, Advocate, for the respondents.

3. At the outset, the counsel for the respondents brought to our notice two decisions on the excisability of masticated rubber. The first one, of this Tribunal, in the case of General Rubbers, Ettumanoor, Kottayam (Kerala) v. Collector of

Central Excise, Cochin - Appeal No.ED(SB)(T)A.No. 237/81 (D) - disposed of by Order No. D-49/83, dated 12.1.1983, held that masticated rubber satisfied the description of "un-hardened rubber sheets" and were classifiable under Item No. 16A(2) of the Schedule and was exempt from duty in terms of Central Excise Notification No. 71/68, dated 1.4.1968 read with Notification No. 27/73 dated 1.3.1973. The second decision rendered by the Kerala High Court on 9.11.1987 on a batch of matters filed by Padinjarekara Rubber Industries and Ors. (Original Petition No. 9180 of 1982 and 8), held that masticated rubber was nothing but natural rubber, that by the process of mastication natural rubber did not change its character nor had it become a substance different from natural rubber. The Court held, therefore, that mastication was not a process of manufacture and that no Central Excise duty could be levied on masticated rubber.

4. Smt. D. Saxena, S.D.R., submitted that the very definition of mastication in the ISI Glossary of terms used in Rubber Industry would show that the result of mastication was different from natural rubber.

The definition, as quoted in the Kerala High Court judgment reads : "The lowering of plasticity of rubber to a desired level by mechanical action". The High Court had considered this definition and the report of the Chemical Examiner to the effect that the sample of masticated rubber was composed mainly of natural rubber and that no added ingredient was detected. It was on this basis that the Court held that the process of mastication did not result in a product different from natural rubber. In the present matter, it is seen from the impugned Order-in-Appeal that the masticated rubber produced by the respondents was obtained as a result of mastication of raw rubber but without addition of chemicals so as to obtain a new product. The respondents' contention that the process of mastication undertaken by them was nothing but breaking up of raw rubber had not been disputed or controverted by the department. From the Order-in-Original dated 31.12.1982, passed by the Assistant Collector, it is seen that the respondents' contention even at the original stage of the proceedings was that they were masticating rubber without adding any carbon or chemicals. The Assistant Collector seems to have proceeded mainly on the basis that natural rubber and masticated rubber were known differently in commercial parlance without, however, disclosing any

evidence in support of his finding. On this particular aspect the Kerala High Court's finding is that the process of mastication does not result in the emergence of a product different from natural rubber, the only change being that the plasticity of rubber was lowered. In the circumstances, we reject the S.D.R.'s contention.

5. The S.D.R. has relied on passages occurring under the head "Mastication" at pages 316 to 317 of the book "Rubber Technology and Manufacture" (Second Edition) published for the Plastics and Rubber Institute by Butterworth Scientific. This was in support of the contention that mastication required certain machinery and would, therefore, amount to a manufacturing process. We have gone through the passages and we cannot discover anything therein in support of the contention that mastication, for the purpose of levy of excise duty, has to be considered as a process of manufacture. No doubt, certain machines are required for the process of mastication but that is not the point. The point is whether, as a result of mastication, the raw material, namely, natural rubber undergoes such a change in its nature as to have resulted in a new product having a different name, character and use and known also differently in trade and commerce. On this point we have the benefit, as already noted, of the Kerala High Court's judgment directly on the point at issue.

6. In the circumstances, and respectfully following the Kerala High Court's judgment (*supra*), we hold that the process of mastication of natural rubber followed by the respondents did not amount to manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act and that such masticated rubber was not excisable under the Central Excise Tariff Schedule. The Collector's contention to the contrary is rejected.

7. In view of above conclusion, it is not necessary for us to consider the aspect of limitation.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com