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Precise Impex (P) Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-04-1988

Reported in : (1989)(40)ELT440TriDel

Appellant : Precise Impex (P) Ltd.

Respondent : Collector of Customs

Judgement :

1. This appeal is directed against Order-in-Appeal No. C3/1901/1983, dated 21.2.84 passed by the Collector of Customs (Appeals) Madras whereby he rejected the appeal filed by M/s. Precise Impex (P) Ltd., New Delhi against Order No. S25/1222/83, dated 27.6.83 passed by the Assistant Collector of Customs, Madras.

2. The claim of the appellants was based on the following three grounds : (a) the product "Stabilizer OS 25" is correctly classifiable under Heading 34.01/07(3) of the Customs Tariff Schedule read with Item 15AA of the Central Excise Tariff Schedule. In the alternative, the proper classification is under Heading 38,01/19(1) of the Customs Tariff Schedule read with Item 68 of the Central Excise Tariff Schedule.

(b) landing charges should be excluded from the computation of assessable value.

(c) additional duty of customs should be charged only on c.i.f.

value.

4. We have heard Shri N.C. Sogani, Consultant for the appellants and Shri C.V.Durghayya, Departmental Representative for the respondent.

5. At the outset Shri Sogani stated that the appellants were dropping the claim on grounds (b) and (c) above. Arguments were therefore advanced only with reference to ground (a).

6. The goods are described by the manufacturers as foam stabilizer.

Their use is particularly indicated when foaming active polyethers and when manufacturing foams with high levels of additional blowing agent.

It is seen from the Assistant Collector's order that the goods on test were found to be a thick colourless liquid. It was a water soluble polymeric complex organic compound based on Silicones. It possessed surface active property, the difference in surface tension in terms of Central Excise Notification No. 208/69 was more than 20 dynes/cm.

7. Shri Sogani submitted that in terms of the recent pronouncement of this Tribunal in the case of Collector of Central Excise, Bombay v.Aurichem-1988 (34) ELT 637 and in the case of Ceat Tyres of India Ltd. Bombay v. Collector of Customs, Bombay (1988) 16 ECC T8 the claim for classification put forth by the appellants was sustainable. He also submitted that the appellants were not making any claim with reference to Central Excise Notification No. 208/69.

8. Shri Durghayya, for the respondent, while agreeing that the aforesaid two decisions would apply to the present case, submitted that the matter might be remanded to the lower authorities for determination in the light of the said two decisions.

9. We have considered the submissions of both sides. We do not see any need to remand the matter to the lower authorities because all the facts which are required for determination of the present dispute are available on record. As noted earlier the product is a silicone based complex organic compound and not silicone itself in any of its primary forms and it has surface active property.

10. In the Tribunal's decision in the case of M/s. Auxichem (supra) it was held that only silicone in its primary states would fall under Item 15A of Central Excise Tariff Schedule. A preparation containing silicone in emulsion for specific uses as in wetting, mould release, lubrication would not fall under the said item. The principle would apply in respect of classification under the Customs Tariff Schedule also. This was discussed in more detail in the decision in the case of Ceat Tyres (supra). The goods in that case were lubricant, the claim of the importers being that it should be classified as a lubricating preparation under Chapter 34 of the Customs Tariff Schedule. The Tribunal, however, found that since the goods were only silicone oils, they were rightly classifiable under Chapter 39. Applying the principles emerging from these two decisions, the goods in the present appeal which are not silicone in any of their primary states but a silicone based complex organic compound having surface active property, the correct classification is, as claimed by the appellants, under Heading 34.01/07(3) of the Customs Tariff Schedule read with Item 15AA of the Central Excise Tariff Schedule and not under Heading 39.01/06 of the Customs Tariff Schedule read with Item 15A(1) of the Central Excise Tariff Schedule, as contended by the Department.

11. In the result, the orders of the lower authorities are set aside and the appeal is allowed with consequential relief to the appellants.

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