Absorbent Carbons Ltd. Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/44678

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-25-2007

Reported in : (2007)(116)ECC492

Judge : P Chacko, K T P.

Appellant : Absorbent Carbons Ltd.

Respondent : Cce

Judgement :

1. After examining the records and hearing both sides, we are of the view that the appeal itself requires to be finally disposed of at this stage. Accordingly, after dispensing with predeposit, we take up the appeal.

2. The appellants are engaged in the manufacture of activated carbon from coconut shell charcoal. The process of manufacture is as follows: In the process of manufacture of activated carbon, the charcoal is manually fed to an elevator which leads to a vibrator where all the impurities like stones, jute, ropes, sand, silicon, etc. are removed. The cleaned charcoal is fed into granulator through a hopper where it is crushed to the required measures. The crushed charcoal is fed into a rotary screener where the charcoal is screened to required measures and collect into HDPE bags through chutes and stacked at the activation yard. This process is called the pre-activation process. The unwanted powder which emerged during this process, which is the subject matter of instant dispute, is collected into HDPE packs and disposed of to local buyers.

The so-called 'unwanted powder', which is called 'charcoal dust', is disposed of without payment of duty. The authorities below classified this item under Heading 28.03 of the CETA Schedule and demanded duty of Rs. 1,40,846/- from the appellants for the period October - December 2004 and imposed on them equal amount of penalty. Hence the present appeal.

3. It is submitted by learned Counsel that the authorities have treated the charcoal dust as 'other forms of carbon not elsewhere specified or included', regardless of the fact that it does not contain more than 62.7% of carbon as reported by the Regional Testing Laboratory, Department of Industries and Commerce, Govt. of Tamil Nadu. In order to be classified under the above Tariff entry, the commodity should be 100% carbon. Referring to HSN Notes under Heading 28.03, learned Counsel submits that this Heading excludes wood charcoal, which is appropriately classifiable under Heading 44.02. Therefore, according to learned Counsel, 'charcoal dust' generated during the manufacture of activated carbon from wood charcoal cannot, in any case, be classified under Heading 28.03.

4. On the other hand, learned SDR refers to the Chemical Examiner's Report which reads thus: The sample is carbonaceous matter in the form of black powder.

Carbonaceous matter means "residual carbon of activated carbon." Relying on this report, learned SDR submits that the item in question is a 'form of carbon not elsewhere specified in the Tariff'. It is also pointed out that the appellant themselves had admitted that the commodity was made of carbon.

5. We have considered the submissions. The lower authorities have apparently treated the subject product as a form of carbon. Heading 28.03 (SH 2803.00) describes the goods thus: Carbon (carbon blacks and other forms of carbon not elsewhere specified or included).

Similar description is found under HSN Heading 28.03 also. The HSN Notes say that this Heading excludes (e) activated carbon and animal black (Heading 38.02) and (f) wood charcoal (Heading 44.02). It is noteworthy that 'activated carbon' is the appellant's final product and 'wood charcoal' is their raw material. Both these items stand excluded from Heading 28.03. Yet, the dust generated during the course of manufacture of activated carbon from wood charcoal in the appellant's factory is sought to be classified by the authorities under Heading 28.03. By no stretch of imagination can this classification be approved inasmuch as even the Chemical Examiner's report gathered by the department does not claim the sample to be wholly composed of carbon.

The report only refers to the product as carbonaceous matter. For the item to be classified as carbon under Heading 28.03, it should be composed wholly of the element carbon. The department, burdened with classification, has not adduced any evidence to show that the subject goods contains only carbon. In the circumstances, charcoal dust cannot be accepted as 'any form of carbon', let alone 'form of carbon not elsewhere specified or included'.

6. It appears that, during the period of dispute, there was no specific entry for wood charcoal. It was only with effect from 28.2.2005 that wood charcoal came to be included in the Tariff, under Heading 44.02.

7. In the light of our findings noted above, the demand of duty on the subject item, based on its classification under Heading 28.03 of the CETA Schedule, cannot be sustained. Accordingly, the impugned order is set aside and this appeal is allowed.