

Tehri Hydro Development Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-28-2007

Reported in : (2007)(212)ELT366TriDel

Judge : S Kang, Vice, N T C.N.B.

Appellant : Tehri Hydro Development

Respondent : Cce

Judgement :

2. These appeals are directed against the order in Appeal No. 104/2004 dated 31.8.2004 of the Commissioner of Customs (Appeals), Nhava Sheva.

The appeals are in regard to the rates of duty applicable to consignments of 'Micro Silica' (Sio 2 -Silicon Dioxide) imported by the appellant.

3. The appellant raised two claims - one that the item should be classified under heading 25 of the Customs Tariff and the other that the consignment should be allowed the benefit of Project Import under Chapter 98.

4. The impugned order held against the appellant on the first issue and confirmed classification under Tariff heading 28, in particular under heading 2811.22. The order omitted to consider the second claim of the appellant (project assessment).

5. The contention of the learned Counsel for the appellant is that Silicon Dioxide would be classifiable under tariff heading 25 as 'natural sands'. It is pointed out

that natural sands, even after processing, would continue to fall under heading 25. The claim is being convassed based on HSN Notes under heading 25 as well as the decision of this Tribunal in the case of Madhu Chemicals Bhavnagar .

6. As against the above contention, the learned SDR pointed out that heading 25 is for naturally occurring sands and not for silicon dioxide which is a manufactured item.

7. With regard to the claim for benefit of Chapter 98 assessment, the contention of the learned SDR is that since the appellant had filed the bill of entry claiming classification under heading 25, the benefit of project assessment could not be made available. According to the learned SDR that dispute is not open any more.

8. We may take up the classification dispute first. Process of manufacture of Silicon Dioxide and its use are stated as under by the foreign manufacturer supplier: Microsilica is a mineral composed of ultrafine, amorphous glass/spheres of silicon dioxide (SiO₂) produced during the manufacture of silicon or ferrosilicon. This process involves the reduction of high purity quartz in electric arc furnaces at temperatures of over 2000 C. The microsilica is formed when SiO₂ gas given off as the quartz reduces, mixes with oxygen in the upper parts of the furnace. Here the SiO₂ is oxidized to SiO condensing into the pure spherical particles of microsilica that form the major part of the smoke or fume from the furnace. Hence the alternative names for the material - condensed silica fume or silica fume. The fumes from the furnace are drawn through cooling pipes, through a pre-collector and cyclone to remove coarse particles that may have been carried over from the furnace - and then blown into specially designed baghouse filters where it is collected.

9. It is noted that heading 25 is for "Salts; Sulphur, earth and stone; plastering materials, lime and cement" and sub-heading 25.05 is for "Natural sands of all kinds". "Silica sands of all kinds" are mentioned under heading 2505.10. Heading 28 is for Chemicals, Components etc. Thus the basic difference in the headings is that heading 25 is for naturally occurring Sands, etc. (even after undergoing the process of cleaning) while chapter 28 covers product of the chemical or allied industries, i.e. manufactured items.

10. In the present case, Micro silica comes into existence when quartz is heated at 2000. During heating, quartz gives out silica oxide (SiO₂).

This silica oxide comes into contact with freely occurring oxygen and becomes silicon dioxide. It is clear from this process that the process is one of manufacture of a new product and not of cleaning naturally occurring sands. It is also to be noted that sub heading 2811 is specifically for "silicon dioxide". It is well settled that an item is not to be taken out of its specific heading and classified under a generic heading.

11. Thus, viewed from both the process of manufacture and specificity of heading, the correct classification is as ordered in the impugned order, under Chapter 28.

Therefore, the appellant's claim for classification under Chapter 25 has no merit.

12. Now we come to the question of project assessment. The imports were in connection with the construction of Tehri Hydro project. The appellant had informed the customs authorities on 9.4.2003 stating that the import of micro silica is directly in connection and for use in the hydro electric project. The requirement of 500 MTs of Micro silica and its specific use were mentioned in the letter. It is clear from the letter that micro silica consignments are for construction of dams and spillway structure and are part of the project. It is also seen from the letter that the project had been registered with the customs authorities. In this view of the matter, the appellant had clearly a case for assessment of micro silica under heading 98 as part of the project. As already noted, the Commissioner has not dealt with this claim at all. The original order was a mere assessment of bill of entry and there is no order as to why the benefit of Chapter 98 is being denied. This claim is required to be considered by the customs authorities afresh. To facilitate the same, the appeal is allowed by way of remand with the direction to the original authority to consider the appellant's claim under chapter heading 98 afresh and to pass an order on that claim.