

Commissioner of Central Excise Vs. Vinit Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-26-2008

Judge : S Jha, a T K.K.

Appellant : Commissioner of Central Excise

Respondent : Vinit Industries

Judgement :

3. The present appeal involves classification of various products manufactured by Vinit Industries which they claimed to be classifiable under Tariff item 15AA of the then existing Tariff. They were however issued a show cause notice stating that the item in question fall under Tariff item 15AA(1). The dispute pertains to the period November 83 to September 84. It has been brought to our notice that in respect of same products manufactured by the same assessee for the earlier period (March 82 to October 83) immediately preceding the present show cause notice. Tribunal vide its Order No. 743-44/99-C dated 9.8.99 has held that the products were classifiable under Tariff item 15AA only. While doing so the Tribunal relied upon the decision of Supreme Court in the case of Reliance Silicon (I) Pvt. Ltd .

Since the products are identical to the one discussed in the decision of the Tribunal which has not been challenged the respondents claim that the issue is squarely covered by the decision and classification confirmed by the Tribunal has to be followed and Commissioner's Order has to be upheld.4. Revenue in its appeal has contended that Commissioner should not have confirmed the

classification without verifying the manufacturing process. However it has nowhere contended that the manufacturing process as adopted by the respondents was different than what they have claimed but have only stated that the Commissioner while deciding the issue should have verified the process of manufacture. Since the Revenue was seeking classification different from one claimed by the respondents, the burden was on the Revenue to bring out that process undertaken by respondents was different from the one claimed by it. In the absence of the same, the Revenue cannot take a stand that the adjudicating authority should have verified the process of manufacture before deciding the matter. We further note that the Tribunal's decision dated 9.8.99 has discussed the process in detail adopted by the respondents and nothing to the contrary is coming from the appeal filed by the Revenue. In view of the above, we upheld the classification under Tariff item 15AA.5. The 2nd issue is regarding admissibility of exemption Notification No. 101/66 dated 17.06.66 which exempts duty paid surface active preparation containing less than five percent of principal active ingredients from Central Excise duty. It is the Revenue's case that this exemption has been extended by the Commissioner without verifying as to whether the surface active preparation manufactured by them was having principal surface active ingredient less than 5% of weight as per terms of the Notification or not. We however find that the matter relates to the year 1984 - 85 and the issue has been decided by the Commissioner in the year 2000 and therefore the Commissioner has rightly pointed out that after 15 years it is not possible to determine the percentage of principal active ingredients contained in the preparation manufactured by the respondents. We further note that the respondents have in their classification list claimed exemption under Notification 101/66 and therefore the burden to prove that preparation did not contain principal active ingredients less than 5% as claimed by them was on Revenue. There is no claim by Revenue that the percentage was more than 5%. In view of this we find no fault in the order of the Commissioner extending the benefit of Notification.

6. In the result the appeal is rejected and Commissioner' order is upheld.