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

Garware Plastics and Polyester Vs. Collector of Customs

Garware Plastics and Polyester Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/6493

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-10-1991

Reported in : (1992)(38)ECC70

Appellant : Garware Plastics and Polyester

Respondent : Collector of Customs

Judgement :

1. The appellants had imported in this case Pigments (Dyestuffs) and had filed Bill of Entry dated 19-12-1980 seeking classification of the product under Heading 32.04/12(2) of the Customs Tariff. Later they filed refund claim for reassessment of the goods under Heading 3204/12(3) or (4) or (5) at 60% + 15% + CVD 30% + 5% but the same was rejected by the Assistant Collector on the ground that the imported items are colours only and not Dyestuff. The Assistant Collector has quoted the test report partly but not in full. He has quoted "Spirit soluble synthetic organic dyestuff' instead of the report which reads the sample is in the form of "Colour powder composed of synthetic organic dyestuff spirit soluble colour". The appellants had also furnished literature of Toaka Chemical Co. Ltd. which states that "Oleosol (R) fast colours are unique metal complex due of organic solvent soluble type". However, the Collector (Appeals) has also not considered that claim but instead has dealt with the literature partly and has referred to the impugned goods as Oleosol (R) fast colours and has also referred to the Toaka marketing various colours ranging from yellow to black and by mixing them by many more colours. On the basis of this observation, he has held that the item imported is

colour only and not organic dyestuff.

2. The learned Collector has based his findings by reading only this much portion of the literature to come to the conclusion that Oleosol (R) is colour only and not organic dyestuff and hence classifiable under Heading 32.04/12(1).

3. The appellants have pointed out that the test report reads "Oleosol Pink FB is in the form of coloured powder composed of synthetic organic dyestuff spirit soluble colour". The literature submitted reads "Taokas, Oleosol Fast colours are unique metal complex dye of organic solvent soluble type" and gives the details of its special features which clearly indicates that product is not merely colour but dyes.

They have relied on the definition of 'Colorant' appearing at page 222 of Hawlay's Condensed Chemical Dictionary, 9th Edition, which is reproduced below - "Colorant - Any substance that imparts color to another material or mixture. Colorants are either dyes or pigments. A colorant may either be (1) naturally present in a material (chlorophyl in vegetation), (2) admixed with it mechanically (dry pigments in paints) or (3) applied to it in a solution (organic dyes to fibres).

Note - A valid distinction between dyes and pigments is almost impossible to draw. Some have established it on the basis of solubility, others on physical form and method of application. Most pigments are insoluble, inorganic powders, the coloring effect being a result of their dispersion in a solid or liquid medium, most dyes, on the other hand, are soluble synthetic organic products which are chemically bound to and actually become part of, the material to which they are applied. Organic dyes are usually brighter and more varied than pigments but tend to be less stable to heat, sunlight and chemical effects. The term colorant applies to black and white as well as to actual colors. Instruments for measuring, comparing and matching the hue, tone and depth of colors are called colorimeters." They have also relied on the literature of M/s. Indian Dyestuff India Ltd. to show the manner in which the product is known in the trade and understood in the commercial sense.

4. We have heard Shri R.M. Patankar, Materials Manager for the appellants and Shri R.M. Ramchandani, SDR for the Revenue. The Tariff Heading 39.04/12

alongwith sub-heading reads as follows -

Sub-heading No.	Rate of duty Central Excise	No. and description of article	Standard Prefe rential Area
(2)	(3)		(4) (5)
Colouring matter - Synthetic organic dyestuffs (including pigments dyestuffs) products of a kind used as luminopheres; opti- cal bleaching agents substantive to the fibre, prepared pigments and prepared opacifiers colour lakes; paints, varnishes and enamels; prepared driers; putty fillers and stoppings; glass frit and other glass in the form of powder, granules or flakes; stamping foils - (1) Not elsewhere specified	150% - 14, 14D (2) Pigment dyestuffs 150% - 14D (3) Synthetic organic dyestuff, not elsewhere 150% - 14D (4) Azodyes 150% - 14D (5) Sulphur Dyes 150% - 14D (6) Vat Dyes including solubilised vats 150% - 14D (7) Optical Bleaching Agent	150%	140% 14DD

On a careful consideration of the matter and on perusal of the Bill of Entry, Test report and the literature produced in support of the appellants case, it is clear that the impugned item synthetic organic is a dyestuff. The Chemical Dictionary meaning of 'Colorant' also clearly indicates that colorants are either dyes or pigments. The note to the definition of 'Colorant' clarifies that a valid distinction between dyes and pigments is almost impossible to draw. The chemical test report has clearly indicated that the sample is in the form of coloured powder composed of synthetic organic dyestuff. The literature relied on by the Collector (Appeals) also does not leave any room for doubt. The invoice and the bill of entry also describes the item as Pigments Dyestuff. In the circumstances, it cannot be said that the item imported is not a dyestuff. Therefore, the correct classification is under Heading 32.04/12(3). The appellants succeed and the appeal is allowed in the above terms with consequential relief, if any.

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