Cemento Corporation Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-14-1993

Reported in : (1996)(83)ELT395TriDel

Appellant : Cemento Corporation Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The issue involved is whether the product 'LYMPO' which is admittedly a Cement substitute, is classifiable as cement.

2. Heard both sides. The appellants have furnished a lot of evidence in support of their claim that 'LYMPO' is a cement substitute and not cement, e.g. the certificate issued by the State Govt. of Bihar under the Quality Marking Scheme which describes 'LYMPO' as a 'Cement substitute' and a certificate from the Director of K.V.I.C. that Lympo is a substitute for cement and that it is a masonary binder but not cement. Similarly, it is pointed out that 'LYMPO' does not satisfy the ISI Standard norm for Portland Cement and that there are separate ISI standards for Cement and for Lime-Pozzolana mixture. National Test House gave a certificate that LYMPO is not cement.

3. It is claimed by the Department that the Tariff Entry Cement includes all varieties of Cement and would cover all masonary binders.

Further, it is pointed out that LYMPO can be used for all purposes for which cement is used except for RCC construction.

4. It is pointed out by the Collector that as per Mcgraw-Hill Encyclopaedia of Science and Technology cement is defined as any substance that acts as a binding agent and Webster Third New International Dictionary defines Cement as a binding element or agency, any fabricated substance to make objects adhere to each other. It is further claimed that it is well settled that Central Excise duty is not confined to goods conforming to ISI norms which are only for the purpose of quality control. Chemical Examiner has opined that 'LYMPO' can be considered as a type of cement though he has advised market enquiries.

5. Considered. This is a fit case where the maxim "Res Ipsa Locquitur" (Thing speaks for itself) can be invoked. This is so because, admittedly 'LYMPO' is a masonary binder. It is used for all construction activities for which Cement is vised except for R.C.C.construction.

6. It is, therefore, difficult to take a view that 'LYMPO' from its actual usage is not a type of cement. Even the major raw materials used are similar viz. LIME STONE and GYPSUM, though their proportions vary.

7. The ultimate test of classification is how the product is known in the trade parlance. LYMPO is put to practically all the uses to which cement is put - except for RCC construction work. Considering all the facts and circumstances, it appears to be an inferior type of Cement like 'Sagol' and 'Asmoh' as held by the Collector - though described as a Cement substitute. When the substitute is so much like the real thing, it is difficult not to hold it as the same.

8. Tariff Item 23 includes all varieties of Cement including products like 'SAGOL' and 'ASMOH'. We, therefore, uphold the Order of the Collector of Central Excise, Shillong which is correct in law and is based on facts and circumstances of the case and reject the appeal.