Collector of C. Excise Vs. Sandeep Enterprises (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-29-1993

Reported in : (1994)LC64Tri(Delhi)

Appellant : Collector of C. Excise

Respondent : Sandeep Enterprises (P) Ltd.

Judgement :

1. The appeal by the Revenue and the Cross-objection by the respondents arise out of the order dated 10-5-1985 passed by the Collector Central Excise (Appeals). The respondents were engaged in the manufacture of a compound out of duty paid Polypropylene falling under Tariff Item 15A(1) and Fibre Glass falling under Tariff Item 22(f). A mixture of 70% Polypropylene and 30% Fibre Glass was heated in an extruder and the molten compound after being extruded was cooled by spraying water. The compounded product obtained after extrusion was cut into small pieces for being sold to parties engaged in the manufacture of moulded articles. The respondents in their letter dated 20-10-1980 addressed to the Superintendent contended that their product was not excisable since the addition of fillers such as fibre glass to duty paid polypropylene did not give rise to any new product. They were, however, served with a show cause notice dated 3-9-1981 by the Superintendent of Central Excise requiring them to show cause as to why the product in question should not be classified under T.I. 15A(I). There after, by his order dated 5-9-1991 the Assistant Collector of Central Excise held that the heating and drawing of the mixture of Polypropylene and Fibre glass amounted to

manufacture under Section 2(f) of the Central Excises and Salt Act, 1944 since the resultant reinforced product had a distinctive name, character and use. On these grounds the Assistant Collector held that the product in question was classifiable under T.I. 68.

2. Being aggrieved by the order passed by the Assistant Collector the respondents preferred an appeal before the Collector (Appeals) who in the order dated 10-5-1985 held that the process carried out by the respondents could not be deemed as constituting manufacture within the meaning of Sec tion 2(f) since fibre glass added to Polypropylene was only in the nature of a filler and as a result of the mixing of the two items no new product could be said to have emerged.

3. Appearing on behalf of the appellants the learned JDR Shri Somesh Arora stated that the process carried out by the respondent's associates amounted to manufacture within the meaning of Section 2(f) since the heating and drawing of a mixture of polypropylene and fibre glass in an extruder results in a new product known as 'Reinforced Plastic' which has various applications. In support of his contention he cited the decision of the Tribunal in the case of V.M.T. Fibreglass Industries, Calcutta v. Collector of Central Excise, Calcutta reported in 1986 (23) E.L.T. 194 in which corrugated and plain roofing in the form of sheets manufactured out of a composition of fibre glass mats and polyster resin was held to be dutiable under Item 15A(2). He submitted that in the respondents' case since the reinforced extruded material consisting of 70% polypropylene and 30% fibre glass was cut into small pieces, it would have to deemed as classifiable under Tariff Item 68. On these grounds he contended that the impugned order was not sustainable.

4. On behalf of the respondents the learned Consultant Shri D.N. Mehta appeared before us. He stated that the disputed product could not be deemed as dutiable since mixing of polypropylene and fibre glass did not result in any chemical reaction and the emerging mixture like polypropylene was usable only as a plastic raw material for the purpose of moulding. He contended that the resultant mixture was not treatable as a new manufactured product in terms of Board's letter F. No.93/9/82-C.Ex. 3 dated 25-3-1983 since fibre glass added to polypropylene was

only in the nature of a filler. He argued that the combination of these items continued to be a moulding composition and no new product had emerged. In support of his contentions he cited the following case law: (1) National Insulated Cable Co. v. CCE - 1989 (42) E.L.T. 109 (Tribunal)CCE, Cochin v. Ceakay Rubber Industries - 1988 (35) E.L.T. 491 (Tribunal) 4A. We have examined the records of the case and considered the submissions made on behalf of both sides. It is seen that the only question which is required to be examined in this case is whether the process of heating and drawing of a mixture of polypropylene and fibre glass in the ratio of 60:40 in an extruder could be deemed as 'manufacture' in terms of Section 2(f) of the Central Excises and Salt Act, 1944.

5. In order to appreciate the rival contentions, we consider it desirable to refer to the following extracts from the definition of 'Polypropylene', 'filler' and 'Reinforced plastic' in the Condensed Chemical Dictionary (Tenth Edition), Revised by Gessner G. Hawley :- "polypropylene $(C_3H_5)_n$. A synthetic crystalline thermoplastic polymer, with molecular weight of 40,000 or more. Note: low molecular weight polymers are also known which are amorphous in structure, and used as gasoline additives, detergent intermediates, greases, sealants, and lube oil additives: also avail able as a high-melting wax.

Forms: Molding powder; extruded sheet; cast film (1 to 10 mils); textile staple and continuous filament yarn; fibres with diameters from 0.05 to 1 micron and fiber webs down to 2 microns thick; low-density foam.

Uses: Packaging film; molded parts for automobiles, appliances, housewares, etc.; wire and cable coating; food container closures; coated and laminated products; bottles (with PVC); printing plates; fibres for carpets and upholstery; cordage and bristles; storage battery cases; crates for soft-drink bottles; laboratory ware; toys; synthetic seaweed to encourage silt deposition; radiator grills; trays and containers for storing precision equipment; artificial grass and turfs; plastic pipe; wearing apparel (acid dyed); fish nets; surgical casts; strap ping; synthetic paper; reinforced plastics; non-woven disposable filters." "filler. (1) An inert mineral powder of rather high specific gravity (2.00-4.50) used in plastic products and rubber mixture to provide a certain degree of stiffness and hardness, and to decrease cost.

Examples are calcium carbonate (whiting), barytes, blanc fix, silicates, glass spheres and bubbles, slate flour, soft clays, etc.

Fillers have neither reinforcing nor coloring properties, and the term should not be applied to materials that do, i.e., reinforcing agents or pigments. Fillers are similar to extenders and diluents in their cost-reducing function; exact lines of distinction between these terms are difficult, if not impossible, to draw. Use of fillers and extenders in plastics has increased in recent years due to shortages of basic materials.

(2) The cross or transverse thread in a fabric or other textile structure.

(3) A metal or alloy used in brazing and soldering to effect union of the metals being joined." "reinforced plastic. A composite structure comprised of a thermosetting or thermoplastic resin and fibres, filaments, or whiskers of glass, metal, boron, or aluminum silicate. Unless otherwise indicated, this term refers to fibreglass- reinforced plastic (FRP).

Properties: Exceptionally high strength, good electrical resistivity, weather and corrosion-resistance, low thermal conductivity and low flammability." 6. On a plain reading of these definitions it follows that the process involving heating of polypropylene and fibre glass in an extruder followed by drawing of the molten mixture and cutting the cooled extruded item, results in the emergence of 'reinforced plastic' a product having a distinctive name, character and use. Since fillers used in plastic products are in the nature of extenders and diluents and they have neither reinforcing nor colouring proper ties and the term does not apply to materials such as reinforcing agents or pigments, the respondents contention that in their case the fibre glass in the mixture acted only as a 'filler' has to be rejected.V.M.T. Fibreglass Industries, Calcutta v. Collector of C. Excise, Calcutta (supra) the Tribunal had held F.R.P. corrugated and plain roofing in the form of sheets manufactured out of fibre glass mats and polyester resin in the ratio of 40:60 as classifiable under Tariff Item 15A(2).

8. In view of the above discussion the respondents' contention that process of heating and mixing polypropylene and fibre glass in the ratio of about 70:30 in an extruder and drawing the molten material for being cut in small pieces after cooling did not amount to manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act, 1944, has to be rejected. We find that during the relevant period all articles of plastics covered by Item 15A(2) other than certain specified ones were exempted from duty under Notification No. 68/71 dated 29-5-1971. Having regard to this fact and also for the reason that the resultant compound had a high proportion of fibre glass we hold that it was correctly classifiable under residuary Item 68 of the Central Excise Tariff.

9. In our view the judgments quoted by the learned Consultant, not being in respect of materials in the nature of reinforced plastics cannot be of any assistance to the respondents.

10. In view of the above discussion, we reject the cross objection and allow the appeal.