

Poly Compounds Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-13-1994

Reported in : (1994)(71)ELT318TriDel

Appellant : Poly Compounds

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order dated 11-10-1991 passed by the Collector of Central Excise (Appeals) Bombay. Briefly stated the facts of the case are that the appellants are, inter alia, engaged in the manufacture of (1) Master Batches of Low Density Polyethylene granule with inorganic chemical and other additives; (2) Master Batches of Low Density Polyethylene granule with organic chemical and other additives; and (3) Compound of Low Density Polyethylene granule prepared with admixture of other additives. They filed a classification list effective from 1-9-1988 claiming classification of the above product under sub-heading 3901.10 on the grounds that in terms of Notes (1), (3) and (6) of Chapter 39 Master Batches cannot be deemed as manufactured products/goods under the Central Excise Tariff Act.

However, by his order dated 19-7-1990, the Assistant Collector held that PVC Compound containing organic pigments was classifiable under subheading 3204.19 and PVC Compound containing inorganic pigments was classifiable under sub-heading 3206.90. Being aggrieved by the order passed by the Assistant Collector the appellants preferred an appeal before the Collector of Central Excise

(Appeals) who observed that the samples of colour Master Batches tested by the Chemical Examiner were found in the form of granules composed mainly of Polyethylene, inorganic pigment and filler; percentage of inorganic filler and pigment being 54.8. He, therefore held that PVC and Polyethylene Master Batches would be classifiable under sub-heading 3204.19, if they are based on organic pigments and under sub-heading 3206.90, if their preparation was based on inorganic colouring matter.

2. On behalf of the appellant, Shri K.A. Sindhi, Consultant appeared before us. He contended that the Master Batches were classifiable under Chapter 39 in terms of Note (1) to the said Chapter and on account of the PVC granule in the Master Batches being duty paid no further duty was leviable on the disputed products since conversion of the duty paid granule into Master Batches or PVC Compound would not amount to manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act. He admitted that the decision of the Tribunal in the case of Kirit Packaging Industries (P) Ltd. v. Collector of Central Excise was against the appellant wherein it had been held that LDPE colour/pigment (Master Batches) were classifiable under Item 68 and not under Item 14-I(1)(ii) as claimed by the Revenue or Item 15-A(1) as claimed by the assessee. He contended that even though for the period prior to 1-3-1986 the Tribunal's finding was against the appellant, no recovery would be permissible for the period prior to that date since in the show cause notice the Department sought to classify the goods under T.I. 14-I(1)(ii) as against the appellants claim for assessment under Tariff Item 15-A(1), whereas the Tribunal had held that during that period the goods in question were classifiable under TI 68. He argued that no show cause notice classifying the goods under T.I. 68 having been issued, no recovery would be permissible in terms of the Tribunal's decision. In support of his contention he cited the following case law: Kutty Flush Doors & Furniture Co. (P) Ltd. v. Collector of Central Excise 2. Bharat Commerce and Industries Ltd. v. Union of India and Ors -1979 (4) E.L.T. 0 527).

As regards the demand for the period subsequent to 1-3-1986, Shri Sindhi contended that the finding by the lower authorities was also contrary to the Board's clarification communicated through Vadodara Collectorate's Trade Notice 61/92

dated 22-7-1992, according to which coloured plastic granules obtained from plain colourless plastic granules did not amount to manufacture. He therefore contended that the finding of the lower authorities that coloured Master Batches in question were classifiable under sub-heading 3206.90 was erroneous.

3. On behalf of the respondent, Shri Sidharth Kak, the learned Joint CDR stated that for the period prior to 1-3-1986 the matter was covered against the appellants by the Tribunal's decision in the case of Kirit Packaging & Industries. He contended that there was no force in the appellants contention that assessment of the goods under T.I. 68 in terms of the Tribunal's decision was not permissible prior to 1-3-1986 since the decision of the lower authorities will have to be deemed as having merged with the Tribunal's decision in terms of Doctrine of Merger. He added that the case law cited by the appellant was not relevant since, in this case, show cause notice disputing the classification of goods as claimed by the appellant had been issued.

He submitted that the Board's clarification cited by the learned Consultant was not relevant since the disputed goods were not coloured plastic granule but Master Batches. He stated that in terms of Note 2 to Chapter 32 the goods in question were correctly classifiable under sub-heading 3204.19 if they were based on inorganic pigment and under sub-heading 3206.90 if they were based on inorganic colouring matter.

On these grounds, he pleaded for rejection of the appeal.

4. We have examined the records of the case and considered the submissions made on behalf of both sides. It is seen from the order dated 19-7-1990 passed by the Assistant Collector that the dispute was in regard to the classification of three products i.e., (1) Compound of duty paid low density polyethylene granule prepared with admixture of other additives (Black Cable " Sheathing Compound); (2) Master Batches or colour concentrate produced out of admixture of duty paid Low Density Polyethylene granule with inorganic chemicals and other additives and (3) Master Batches or colour concentrate produced out of admixture of duty paid Low Density Polyethylene granules with organic chemicals and other additives. However, the Assistant Collector gave his finding only in respect of two

products i.e., (1) PVC Compound containing organic pigments and (2) PVC Compound containing inorganic pigments. In the impugned order, the Collector (Appeals) also confined himself to the consideration of the question of classification of coloured Master Batches. Thus none of the lower authorities gave any finding in regard to the classification of Compound of LDPE (Black Cable Sheathing Compound) consisting of mixture of 2 to 3% Carbon Black with LDPE resin in the form of granules and other additives. In the appeal before us the appellants have also raised the question of classification of LDPE Compound (Black Cable Sheathing Compound). This has not been examined by the lower authority. We therefore remand the matter back to the Assistant Collector for de novo consideration and give finding in respect of the disputed products in accordance with law after affording an opportunity of personal hearing to the appellants.

5. In view of the above discussion, the impugned order is set aside and the appeal is allowed by way of remand.

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