

Collector of Central Excise Vs. Binny Ltd. (B and C Mills)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-06-1994

Reported in : (1994)(73)ELT919TriDel

Appellant : Collector of Central Excise

Respondent : Binny Ltd. (B and C Mills)

Judgement :

1. This is an appeal filed by the department against the order of Collector (Appeals), Madras dated 29-7-1988.
2. Ld. D.R. stated that the Respondents are manufacturing 'Sizing Mix' which is consumed captively by them. They obtain various raw materials from market and subject them to the process described in details in the cross-objection filed by the Respondent.
3. It was their contention that the product so obtained is excisable and classifiable under Chapter 38.09.
4. It is a clearly recognised distinct product which comes into existence as a result of process of manufacture; and the fact that these goods are not actually sold is not relevant for considering excisability.
5. Similar sizing agents for use in textile/paper industry are available in the market.

6. The Assistant Collector has given detailed reasons in her order but the Collector (Appeals) has set aside that order and accepted the Respondent's version that it has no shelf life without any evidence thereof.

7. That it had escaped taxation earlier is also not relevant because the demand has been restricted to six months period.

8. The Government has in fact exempted Sizing Agents falling under Chapter 38 from payment of duty under Notification No. 172/87. It will also go to prove that it was excisable.

9. The Ld. Counsel stated that first and foremost he would like to state that the material in question is not a manufactured product as evident from the process of its preparation indicated by them in the cross-objection and accepted as correct by the department and not objected to even now.

10. Secondly the department has confused between 'Sizing Agent' and 'Sizing Mixture'.

11. Their material is not a Sizing Agent by itself but a mixture of various Sizing Agents procured from the market which are then cooked with other chemicals to prepare this material for use in sizing and it has no shelf life in as much as it will immediately harden and will become useless unless used immediately or soon after preparation.

12. In fact the proportion in which various materials are combined varies from material to material to which it is applied and is a closely guarded trade secret and therefore it is not available and cannot be available in the market.

13. It is also their contention that in the case of similar preparation in similar other industries, the Board itself has now come round to the view that such preparations are not excisable as for example in the case of printing paste.

14. It was also his submission that in any eventuality even if it was considered as a product and preparation of a kind used in the textile industry falling under Heading 38.09 even then it would have to be considered as exempt during the relevant

period by virtue of 11C Notification No. 18/89, dated 6-4-1989 which covers the period in question.

15. Ld. D.R. agrees that the product is covered by 11C Notification No.18/89, dated 6-4-1989.

16. We observe that Ld. Counsel's contentions have a lot of force. The department has not produced any evidence of marketability of the material in question. Hence, department's case remains unsubstantiated.

17. However, even if it was considered as an excisable product the Ministry having itself issued the Notification No. 18/89 which admittedly covers the period in question, no duty would be chargeable.

Therefore, whichever way, we may look at it the department has no case for demanding duty.

18. In the circumstances we see no reason to interfere with the order of the Collector already passed. The appeal is therefore dismissed.

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