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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-31-1995

Reported in : (1996)(83)ELT432TriDel

Appellant : indrol Lubricants and

Respondent : C.C.E.

Judgement :

1. It is an appeal against the order of the Additional Collector.

Learned Counsel stated that the issue relates to a dispute regarding classification of their product which they have described as blended or compounded lubricating oil.

2. They had submitted a fresh classification list, when the tariff changed in 1986, showing the classification under 2710.60 and the same was approved by the Assistant Collector and they had been clearing the goods accordingly.

3. Subsequently, the department issued a show cause notice dated 19th July, 1988 alleging that they had misdeclared and misclassified the product.

4. It was their contention that they had correctly described the product and rightly shown the classification as their product was being used for lubrication of refrigeration compressors and hence, sometimes described as 'refrigeration oil' or a speciality oil but its basic function was lubrication. In support of their contention, they had produced their own product literature as well as ISI specifications.

They had also produced pamphlets of various famous companies like Indian Oil, Bharat Petroleum etc. to show that they were also manufacturing oil similarly for refrigeration compressors. They had also produced documents from the users such as Hindustan Lever to show that it was being so used as lubricant.

5. The department's sole ground is that prior to 1986 it had been declared as a speciality oil and was classified under Tariff Item 68.

It was their contention that the tariff has since changed and it satisfies the criterion laid down in 2710.60 as it is ordinarily used for lubrication and its flash point is above 94C.6. In this connection, their pamphlet regarding their product titled "Castrol Refrigeration Oil 15, 32, 68 & 100 Refrigeration Oils Product Data Indrol", shows the applications as well as the characteristics including flash point.

7. The ISI specifications IS : 4578-1968 (Annexure 'A') also describes the uses as follows : "0.2 The primary function of a refrigeration oil is to lubricate, either through splash or forced feed, the pistons or rotors and the bearings of the refrigeration compressor and to serve as a sealing medium. It also serves as an additional cooling medium to dissipate heat of motor windings in case of hermetically sealed compressor units".

8. It was also his submission that the demand is in any case time barred as there was no suppression of facts on their part.

9. Learned DR drew attention to the order of the Additional Collector and reiterated the department's contentions mentioned therein.

10. He emphasised that prior to 1986, the appellants sought classification under Tariff Item 68 instead of 11 (A). There has been no change in composition but they have changed the description of the product and shown the Tariff Heading 2710.60.

11. The user's certificate and other documents produced by them before the Additional Collector were not acceptable as it was considered as an after-thought.

12. In response to queries, the learned DR stated that the Assistant Collector had approved the classification list after 1986 as claimed by the appellants classifying the product under 2710.60. He also stated that there is nothing in the order to show that any chemical test was undertaken.

12A. It was his contention that since there was a misdeclaration, therefore, normal time bar did not apply.

13. He stated that the other side had not produced the earlier classification list but on a query from the Bench, accepted that the present case related to post 1986 period.

14. We have considered the above submission. We observe that it is an admitted fact that the taiff description and headings changed due to change in tariff in 1986. In this particular case, insofar as 2710.60 is concerned, it reads as follows : "2710.60 - Lubricating oil, that is to say, any oil as is ordinarily used for lubrication, excluding any hydrocarbon oil which has its flash point below 94C".

15. Therefore, once the assessee had filed the classification list claiming this heading, it was open to the Department to draw a fresh sample and test it with reference to the criterion now mentioned in the new tariff heading in the light of the chapter notes and the heading itself. The Assistant Collector is approved the classification list subsequently if a dispute arises the burden is on the department to show that what was declared was false or incorrect and there was intention to defraud.

16. Admittedly, no test was undertaken even though it was apparently required in terms of the heading language.

17. The appellants have filed product literature and ISI specifications. The product literature clearly shows 'applications' i.e. uses as well as characteristics. Chapter notes in chapter 27 refer to ISI specifications and in particular define the flash point in the the following words of Chapter Note 4 with which we are concerned : "'Flash Point' shall be determined in accordance with the tests prescribed in this behalf in the rules made under the Petroleum Act, 1934 (30 of 1934)." The ISI

specifications, apart from the appellants' product literature, also show the main use of refrigeration oil as lubrication, and the product literature also shows a flash point above 94C. In order to establish its case, the department was required to show that the product did not meet with these requirements but it has not done so. A serious charge like misdeclaration cannot be made much less upheld merely on presumption or assumption without any evidence, circumstantial or otherwise.

18. Since the misdeclaration has not been proved, the normal time bar applies. Therefore, whichever way we may look at it, the department has no case.

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