

SUPREME COURT OF INDIA

Commissioner of Central Excise, Mumbai-III

Vs.

Reliance Silicones Limited

C.A.No.305 of 1999

(S. H. Kapadia, S. N. Variava and Dr. A.R. Lakshmanan JJ.)

02.11.2004

JUDGMENT

S. N. Variava, J.

1. This Appeal is against the Order of the Customs, Excise and Gold (Control) Appellate Tribunal (in short "CEGAT"), Mumbai dated 24th February, 1998. The question before us is whether three products manufactured by the Respondents are to be classified under Tariff Item 27.10 or 39.10.

2. The Respondents had filed classification lists as far as back on 7th March, 1988 and 26th September, 1988. These classification lists had been approved by the Assistant Commissioner. However, such approval was subject to chemical test report.

3. On 11th May, 1992 samples were drawn and sent to the Deputy Chief Chemist for the purpose of obtaining a test report. This test report indicated that these products were silicone oil in primary form. The Respondents demanded a second test. Another report was obtained on 2nd December, 1993 which held that these products were not silicone oil in primary form. It appears that the Department called for a third report from the Chief Chemist. The Chief Chemist not only tested the products but also visited the factory to ascertain the manner of production. Thereafter, the Chief Chemist opined, by his report dated 30th May, 1995, that these products were not silicone oils in primary form.

4. In spite of these reports, the Commissioner of Central Excise, by the Order dated 27th May, 1996, held that these products were classifiable under Tariff Item 39.10. The Respondents filed an Appeal before the CEGAT which has been allowed by the impugned Judgment. Noting the two subsequent test reports CEGAT has held that they are the best evidence. It has held that mere statements obtained from some dealers in the market cannot prevail over these test reports. CEGAT has held that the product cannot be classified under Tariff Item 39.10.

5. We see no infirmity in the Judgment of CEGAT. Even otherwise we find that the question

under consideration is covered by a decision of this Court in the Respondents own case *reported in*¹ wherein it has been held that the emulsions of this nature cannot form the part of the, then Tariff Item 15A(1) (which is now Tariff Item 39).

6. Under the circumstances, we see no reason to interfere. The Appeal stands dismissed. There will be no order as to costs.

¹1996 (88) ELT 3 (SC)