(1997) 07 SC CK 0014

In the Supreme Court Of India

Case No : Civil Appeal No. 7542 of 1994

Travancore Electro-Chemical Industries Ltd. APPELLANT

Vs

Collector of Central Excise, Cochin RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:

Citation : AIR 1999 SC 2631 : (1999) AIRSCW 1820 : (1997) 94 ELT 279 : (1998) 7 JT 430 : (1998) 9 SCC 214

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant is engaged in the manufacture of Calcium Carbide and Acetylene Black. During the course of the manufacturing process Acetylene gas is produced and it is captivity consumed in the production of Acetylene Black. As regards levy of excise duty the following provision was contained in Item No. 14-H of the Central Excise Tariff:

"14-H. (vi) Acetylene (whether in dissolved condition or not)."

2. Acetylene Black is dutiable under Tariff Item No. 64 and the appellant paid excise duty on it. The case of the appellant is that acetylene gas that was produced during the manufacturing process was not marketable for two reasons: (i) it contains impurities such as moisture (H20), phosphine, ammonia, etc., which renders it highly explosive and dangerous for handling and transport, and (ii'') for the purpose of marketability, it is necessary that the gas should be dissolved in acetone and compressed in special cylinders. The appellant has placed reliance on scientific literature in support of the contention that the Acetylene gas produced by the appellant was not marketable. In the impugned judgment the Customs. Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") has, however, held that the gas that was produced was in the nature of commercial acetylene and, in spite of impurities it was

marketable and, therefore, must be regarded as "goods" and liable to duty under Tariff Item No. 14-H(vi).

3. Shri S. Ganesh, the learned counsel for the appellant, has assailed the said finding recorded by the Tribunal. The learned counsel has invited our attention to the recent decision of this Court in Dharangadhra Chemical Works Ltd. v. Union of India . In that case the appellant-Company was manufacturing Trichloroethylene as the end-product. In the process of the manufacture of the said product Acetylene gas emerges. This Acetylene gas was in a crude form and was used by the assessee in the manufacture of the end-product and the question was whether it was liable to excise duty under Tariff Item No. 14-H(vi). On behalf of the appellant-assessee, it was urged that this gas in the crude form was not marketable or capable of being marketed and, therefore, the assessee was not liable to pay excise duty. It was pointed out that it could not be said to be marketable unless it was further treated by dissolving it in acetone and compressed in cylinders so that it could be taken out to the market for sale. Having regard to the decision in oti Laminates (P) Ltd. v. CCE that even though the goods are covered by the tariff item but unless marketable or capable of being marketed, they are not excisable to excise duty, this Court has held that it was essential for the authorities to record a clear finding on the question whether the Acetylene gas in the form in which it emerged and was used for consumption was marketable or capable of being marketed. In that case no positive finding had been recorded and the matter was remanded to the Tribunal for recording a finding in that regard.

4. In the present case a finding has been recorded by the Tribunal that the Acetylene gas produced during the manufacturing process was marketable. But in arriving at the said finding the Tribunal has taken into account only the material that was placed by the departmental representative. The Tribunal has not taken into consideration the material that was placed by the appellant to show that the Acetylene gas that was produced contains impurities in excess of the permissible limit which renders it highly explosive and dangerous for handling and transport and that it is not marketable in the conditions prevalent in this country. The finding recorded by the Tribunal that the Acetylene gas that is produced during the course of manufacture of calcium carbide was marketable cannot, therefore, be upheld and the matter has to be remitted to the Tribunal for recording a fresh finding on this question keeping in view the material that has been placed by the appellant in that regard. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside and the matter is remitted to the Tribunal for considering the question whether the Acetylene gas that is produced in the factory of the appellant during the course of manufacturing of Calcium Carbide and Acetylene Black is marketable and is, therefore, "goods" on which excise duty is payable under Tariff Item No. 14-H(vi). No order as to costs.