

Soaps manufactured without usage of power – Using electricity for unloading raw material cannot be held as 'manufacture with aid of power': CESTAT

THE appellant is a manufacturer of ayurvedic bath soap without the aid of power and accordingly classified the goods under CETH 3401.12 attracting Nil rate of duty. Department initiated proceedings on the ground that that the assessee had manufactured ayurvedic bath soaps with the aid of power and had cleared the goods without payment of duty or complying with other provisions of the Central Excise Rules, though the product was classifiable under sub-heading 3401.19 during the relevant period. It was alleged that the product was not classifiable under sub-heading 3401.12. In adjudication of the dispute, the Commissioner of Central Excise dropped all the proposals after holding (a) that, as no power was used in the process of manufacture of soap by the respondent, the product would be rightly classifiable under sub-heading 3401.12 and chargeable to (nil) rate of duty, (b) that there was no suppression of any fact by the respondent and hence the proviso to Section 11A(1) of the Act was not invocable and (c) that consequently there was no question of levy of penalty from the assessee or from the co-noticee.

Revenue is in appeal before the Tribunal against the said order of the Commissioner, dropping the demand.

After hearing both sides, the Tribunal dismissed the appeal filed by the Revenue by holding that: Insofar as the use of power for bringing caustic soda lye to the storage tanks of the respondent is concerned, the case of the respondent is fully supported by CESTAT – Madras – 2007 ruling. It is not in dispute that the said final order was passed in respect of another "MEDIMIX" soap manufacturing unit. In that case, the raw material supplier had contracted to supply the raw material at the storage tanks of the assessee and, as part of transportation of the material upto the tank, they took the aid of power. The Bench held that such transportation of raw material could not be held to have been done in, or in relation, to the manufacture of soap. It is nobody's claim that the said Final Order passed was not accepted by the Department. In this scenario, the submission of the respondent that their product cannot be classified under sub-heading 3401.19 by reason of the fact that power was used to bring one of the raw materials to the factory has to be accepted.

As regards testing of raw materials and the final product, the appellant is yet to prove that electrically operated equipments were used for such testing in the respondent's factory during the period of dispute. The statement recorded does not categorically state that any of these equipments was used for testing the vegetable oils or caustic soda lye or the final product with the aid of power during any part of the period of dispute. Therefore the ground taken by the revenue that the assessee admitted that the quality control equipments and machinery were operated with the use of power has no substance