

Converter Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-04-1997

Reported in : (1999)(112)ELT980Tri(Mum.)bai

Appellant : Converter

Respondent : Commissioner of Central Excise

Judgement :

1. The issue for decision in this appeal is whether the goods described as containers in unassembled condition and used for packing boxes of matches is to be classified under Heading 1419.11 or Heading 1419.19 of the Central Excise Tariff.

3. The product consists of a sheet of paper in two layers, merely with an internal coating of bitumen, stuck-together. We have our reservations as to whether such a sheet of paper can be considered to be a container in the form in which the sheet exists, it appears to us that it can be used for many purposes other than for packing. It is also difficult for us to agree that a sheet of paper used to wrap some goods becomes by that act, a packing container within the meaning of Heading 48.90. However, these are not the issues in the appeal and we therefore do not propose to dwell further on these aspects.

3. It is the appellant's claim that because the goods are used to pack matchboxes, which is filled with matchsticks, these are actually used to pack the matches. The claim has been rejected on the ground that the goods are used not to pack the

matches themselves but to pack the boxes containing such matchsticks. The excisable commodity that the manufacturer who uses the containers makes is matchsticks. For the convenience of marketing these are packed in boxes known as the matchboxes. When a number of such boxes are packed in the goods under consideration, therefore, it would, in our view, be incorrect to say that these are used only to pack the container, the boxes and not the matches themselves. It is common practice in excise to consider primary and secondary packing i.e. packing which is essential to put the goods in the market and further packing in order to protect the goods from damage in transit. Therefore, the use of the word "matchsticks" (not matchboxes) in Heading 4819.11 does not justify the conclusion that the goods cannot be used to pack matchsticks. If the term match boxes were used in the heading it could be argued that it would be empty boxes and not the container matchboxes. The contention that it is only the sticks that would be considered for packing is unduly restricting and cannot be accepted. Appeal therefore succeeds on this ground. Impugned order set aside.

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