

Collector of Central Excise Vs. Perfect Packaging

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-23-1997

Reported in : (1997)(93)ELT478TriDel

Appellant : Collector of Central Excise

Respondent : Perfect Packaging

Judgement :

1. This is an appeal filed by the Department against the order of Collector (Appeals) Bombay.
2. The respondents have sent a letter dated 11-1-1997 incorporating their written submissions and requesting that their absence may be condoned and case may be decided on the basis of their submissions and the records.
3. Learned D.R. stated that in this case the appellants had filed a classification list showing dated [sic] (51/89 allotted Member) effective from 1-4-1989. This classification list shows at Serial No. 2 the words 'Sleeves and Wrappers' and Tariff Item No. 4819.12. This classification was approved by the A.C.4. The department's appeal against the A.C.'s order was rejected by the Collector (Appeals) on the ground that he had seen a sample of the product and on perusal thereof he found that "product is in the nature of flattened and folded cartons". Since the folded and flattened cartons are specifically covered under sub-heading number 4819.12, the product of the respondent is correctly classifiable under sub-heading 4819.12.

5. He has, however, also added that "further the so called wrappers of the respondent are not cut to shape and size and hence cannot be classified under sub-heading 4823.19 as contested by the Department".

6. The Department is aggrieved of this finding of the Collector and in this connection he would draw attention to the ground of the appeals.

7. It was the Department's contention that sleeves and wrappers were not classifiable under 4819.12.

8. In response to the query of the Bench as to whether sleeves and wrappers indicated here were two different products or one, the learned D.R. drew attention to the classification list and said that the words used here are 'Sleeves and Wrappers' and, therefore, in the absence of any other sample or photograph or detailed description in the appeal memo he can only presume that they were two different products. Further in view of the above sentences in the Collector's order quoted above, it also appears that he is talking of flattened and folded cartons on one hand and the so called 'wrappers' on the other, holding the former classifiable under 4819.12. It was his submission that while Collector was right in holding that folded and flattened cartons are covered under heading 4819.12 and, therefore, if the product called as 'sleeves' was like the sample which was produced before the Collector and described by him as flattened and folded cartons then nothing further can be added at this stage.

9. In response to further query from the Bench Learned D.R. said that as far as he was aware 'sleeves' are a form of packing in which something could be inserted or slipped in. It was, however, his contention that the so called wrappers could not be classified under the heading 4819.12, if they were not cut to shape and size and then they would fall in the entry of [sic] but if they were cut to shape and size as pleaded by the respondent then they would fall under 4823.19 which is the residuary entry but in either situation they would not fall under 4819.12.

10. In response to further queries from the Bench with reference to the respondent's written submissions dated 11-1-1987 enclosing a sample of the product Ld. D.R. stated that the product has been described by the respondent as

a 'wrapper' which is cut to shape and size whereas the Collector has described the so called wrapper as 'not cut to shape and size'. However, if the enclosed sample is the sample of the product which had been described in the classified list and classified by the A.C. and Collector (Appeals) under 4819.12, - ^T it is a different matter. 11. We have considered the above submissions; we observe that at the original stage the A.C. has not passed any adjudication order or speaking order evidently because whatever classification was asked for by the respondent, assessee was acceptable to him on the basis of Superintendents report and, therefore, there was no dispute at that stage.

12. At the Collector's (Appeals) stage also it appears that a sample of the product which has been described in the classification list as 'Sleeves and Wrappers', was produced before the Ld. Collector and the respondent had drawn attention to the fact that it was on the advice of the Senior Superintendent, Central Excise Division K-II and upon his verification of actual printed sample of the said 'wrapper' and his observation that the same was in the nature of flattened or folded carton duly printed and that printing on it was merely incidental to the main purpose of packing of the goods and the product was classifiable under Chapter heading 4819.12 that they had agreed with him and filed the classification list accordingly.

13. The Collector (Appeals) had also seen the sample and described the product as a "flattened and folded carton" and undisputedly folded and flattened cartons (whether printed or not) are covered under heading 4819.12.

14. In the letter dated 11-1-1987 the respondents have repeated the submissions made before the Collector and have further explained that in the ^ common market terminology goods in question were known as 'wrappers' but actually they are printed sleeves for protecting and detailing the product packed, though they had cleared the same as 'wrappers'. This assertion has not been shown to be wrong. The respondents have also enclosed a sample of the product said to be shown to the Collector as well and a perusal of this sample shows that it is in the nature of a flattened cover or package open at both the ends and the description broadly tallies with that of the Superintendent and the definition of 'Sleeves'.

15. According to Webster's Ninth New Collegiate Dictionary 'Sleeve' means an open ended flat or tubular packaging or cover.

16. According to HSN the products called as sleeves are classifiable under the heading 4819.12. 17. In view of the above position the item was required to be classified under heading. 4819.12; And, therefore the Collector's order regarding the item called as wrapper or sleeve by the respondent was correct.

18. Since the Collector has himself first described the product as flattened and folded carton, and held it to be classifiable under heading 4819.12, the incorporation of the word 'not' in the subsequent sentence stating that the so-called cause wrappers of the respondent are 'not' cut to shape and size appears to be an error when this sentence is read in the context of the preceding sentence and the following part of the sentence where the Collector goes on to say that it cannot be classified under heading 4823.19.

19. From the material before us including the reference to the examination of the sample by the Superintendent and the Collector and the sample enclosed by the respondent with his written submissions it appears that it is the product which is called sleeves in HSN and described both as 'sleeves' and 'wrapper' by the respondent which was in question and its correct classification was under heading 4819.12

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