Garware Plastics and Polyester Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-09-1997

Reported in : (1997)(94)ELT516TriDel

Appellant : Garware Plastics and Polyester

Respondent : Commissioner of C. Ex.

Judgement :

1. In this appeal filed by M/s. Garware Plastics & Polyester Ltd., Bombay, the matter relates to the classification of the cover made of plastics for Video Cassette. The appellants were engaged in the manufacture of Video Cassette Covers made out of Polystyrene. They had classified these covers under Heading No. 39.22 of the Central Excise Tariff. The classification was approved by the concerned Central Excise Officers without any change. Subsequently, an application under Section 35E of the Central Excises & Salt Act, 1944 was filed and the Collector of Central Excise (Appeals), Bombay held that the goods were classifiable under Heading No. 85.23 and not under Heading No. 39.22 of the Tariff.

2. The appellants have filed written submissions and have prayed for decision on merits.

3. In their written submissions, they had referred to the Tribunal's decision in their own case on Revenue's appeal in the case of Collector of Central Excise, Bombay-I v. Garware Plastics & Polyester Ltd. - 1996 (84) E.L.T. 476 (Tribunal)

wherein the Tribunal had held that Video Cassette Covers were not classifiable under sub-heading 8523.00 of the Tariff. The Tribunal had held that the goods were classifiable as other articles of plastics and articles of other materials of Heading No.39.01 to 39.18.

4. We have heard Shri M. Jayaraman, JDR for the respondents/Revenue and have gone through the facts on record. In these proceedings, we are only concerned with the classification of the Outer Cover placed on the Video Cassette. The Video Cassette will be housed in its own container and is kept for safety in the Outer Cover and when the Video Cassette is used, the Cassette is taken out of this Outer Cover and the Cassette without such a Cover is inserted into the Cassette Recorder/Player. The ld. Collector of Central Excise (Appeals) had classified such a Outer Cover made of plastics under Heading No. 8523.00 which covers "prepared, un-recorded media for sound recording or similar recording or phenomenon other than products of Chapter 33." He had referred to Note 2 under Section XVI of the Act. Under Note 2(b), it has been provided that the parts if suitable for use solely and principally with a particular kind of machine will be classifiable with the machine of that kind. We consider that the Outer Cover could not be taken as a part of the Video Cassette. He also referred to the Tribunal's decision in the case of CCE, Bombay v. Garware Plastics & Polyester Ltd. - 1996 (84) E.L.T. 476 (Tribunal). Para-6 from that decision is reproduced below :- "6. Coming to the merits of the case, we find that Heading 39.23 is specific to the type of goods under consideration by us. The outer covers are used only for packing these video cassettes for storage and for transportation. Heading No. 39.23 refers to articles for the conveyance or packing of goods of plastics ...". This therefore specifically covers the outer covers made of plastics used for packing the goods or for their conveyance. Heading 3926.90 on the other hand refers to "other articles of plastics, and articles of other materials of Headings 39.01 to 39.14. This being a general heading and also residuary in nature cannot be preferred to specific Heading 39.23. In view of this we hold that the goods in question are correctly classifiable under Heading No. 39.23." 5. Other articles of plastics and articles of materials of Heading Nos.

39.01 to 39.14 were covered under Heading No. 39.22 during the period 1-3-1986 to 9-2-1987. With effect from 10-2-1987, the Tariff Entry underwent a change and articles for the conveyance or packing of goods of plastics; stoppers, lids, caps and other closures of plastics were covered under newly inserted Heading No. 39.23. In the proceedings, we are concerned with the period prior to 10-2-1987. The Tribunal's decision aforesaid had to be seen in the light of this position.

6. Taking all the relevant facts and considerations into account, we do not agree with the views taken by the ld. Collector of Central Excise (Appeals), Bombay. We hold that the plastic Outer Cover for Video Cassette were correctly classifiable under Heading No. 39.22 of the Tariff as in force during the relevant time.

7. In view of the above discussion, the appeal is allowed. Ordered accordingly.