Garware Plastics and Polyester Vs. Collector of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-19-1997

Reported in : (1998)(99)ELT346TriDel

Appellant : Garware Plastics and Polyester

Respondent : Collector of Cus.

Judgement :

1. In this appeal filed by M/s. Garware Plastics & Polyester Ltd., the matter relates to the classification of spares for polyester film metallising plant and their eligibility to the benefit of Notification No. 172/89-Cus., dated 29-5-1989. The appellants had imported the spares for polyester film metallising plant and the goods were assessed to duty under Heading No. 9806 of the New Tariff read with Heading No.8477 of the said Tariff. Under Heading No. 98.06, all parts of the machinery, among others, classifiable under Heading No. 84.77 were classifiable. The importer filed bill of entry for and after the assessments and after the proper procedure was followed for warehousing the said goods. The parts of the machinery 'otherwise classifiable under Heading No. 84.77 came to be classifiable under sub-heading No.8477.90. The Collector of Customs (Appeals) took a view that the Customs' Officers at the warehouse was not competent to change the classification and that the importer themselves claimed assessment under subheading No. 8477.80 and as this Heading did not figure in the exemption Notification No. 172/89-Cus., the benefit of that Notification was not available to the goods in question. The appeal filed by M/s. Garware Plastics Ltd. was

rejected.

3. Shri S.N. Ojha, JDR reiterated the points made by the Collector of Customs (Appeals) in his order.

4. We have carefully considered the matter. We find that when the goods were sought to be cleared from the warehouse to which they have been properly entered, the original Heading No. 98.06 was no more in the Tariff. On the date of the clearance for home consumption the correct classification was under sub-heading No. 8477.90 of the Tariff. The sub-heading No. 8477.80 is for the complete machine while there is no dispute that what were imported were the parts. On the date of clearance, the parts of the machine classifiable under Heading No.84.77 were classifiable under sub-heading No. 8477.90. The goods falling under sub-heading No. 8477.90 were eligible for the concessional rate of duty under Notification No. 172/89-Cus., dated 29-5-1989 under Sl. No. 48 of the Table annexed to that Notification.

Although at the time of clearance for home consumption the appellants have shown classification under subheading No. 8477.80 which was for the complete machine, we find that at the time of bill fo entry for warehouse, the classification had been shown under sub-heading No.8477.90 which had been changed to Heading No. 9806.00.

5. We consider that in the peculiar facts and circumstances of this case at the time of the clearance, Heading/sub-heading under which the original assessments had been made at port of import was no more in the Tariff and so it is not the case of changing the classification. The correct rate of customs duty in respect of the warehoused goods is as on the date of clearance for home consumption and in this case at the point of clearance, the correct sub-heading for assessment was 8477.90 of the Tariff. We have already recorded that the goods falling under sub-heading were eligible for the concessional rate of duty under Notification No. 172/89-Cus. In view of the above discussion, we do not agree with the views taken by the Collector of Customs (Appeals) and as a result, the appeal is allowed. Ordered accordingly.