Collector of Central Excise Vs. Johnson and Johnson Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-01-1997

Reported in : (1998)(101)ELT510TriDel

Appellant : Collector of Central Excise

Respondent : Johnson and Johnson Ltd.

Judgement :

1. This Appeal is directed against the order-in-appeal passed by Collector (Appeals) dated 16-5-1989.

2. The short question involved in this appeal relates to correct classification of electrical insulators. The Respondents claimed classification of the electrical insulating tapes made either from Polyester or from glass fabric under Heading 85.46. Assistant Collector however classified three types of tapes under Heading 3910.00 and the first type under Heading 70.14. In the Revenue Application, the department sought classification under Heading 70.14 in view of Note i(e) to Chapter 70. Collector (Appeals) while rejecting the departments application, holding that the insulators are correctly classifiable under Heading 85.46.

3. Arguing on behalf of the Revenue, the ld. DR submits that the note to Chapter 70 specifically includes such insulators under Chapter 70, and in any case these insulators perform dual function and cannot be classified under Heading 85.46.

4. Arguing on behalf of the Respondents the ld. Counsel submits that the matter is squarely covered in their favour by Tribunal's order in the case of Chetna Polycoats (P) Ltd. v C.C.E. reported in 1988 (37) E.L.T. 253. The Revenue Appeal to Hon'ble Apex Courts against this order has been dismissed as seen from 1991 (53) E.L.T. A28.

5. We have heard both sides. In case of Chetna Polycoats (P) Ltd. v.C.C.E. (supra) classification of electrical insulators came up for discussion. The Tribunal held that electric insulation tapes are classifiable under Heading 85.46 as electrical insulators and not under Heading 39.19 as self adhesive tapes. Tribunal subsequently in case of Intet Tapes Pvt. Ltd. v. C.C.E. reported in 1992 (59) E.L.T. 97 relying on the decision of Chetna Polycoats (P) Ltd. held that insulation tapes manufactured from Polyester films and PVC are classifiable under Heading 85.46 of Central Excise Tariff Act, 1985 as electrical insulators. They also noted that in the Departmental appeal against this order, Hon'ble Apex Court had upheld the findings of the Tribunal vide order dated 13-2-1991 reported in 1991 (53) E.L.T. A28.

6. In grounds of Appeal, the Revenue have contended that Collector (Appeals) has relied upon the decision of the Tribunal in case of Chetna Polycoats (P) Ltd. (supra) but the decision of the C.E.G.A.T.has not been accepted by the department and an appeal has since been filed with the Hon'ble Supreme Court. As already noted the findings of the Tribunal have been upheld by the Hon'ble Apex Court and therefore the main ground on which the Revenue has sought to rely no longer exists. In view of this, we do not find any infirmity in order of the Collector (Appeals) and therefore we uphold the order and reject the Revenue Appeal.