Collector of Central Excise Vs. Shree Laminating Ltd.

Collector of Central Excise Vs. Shree Laminating Ltd.

SooperKanoon Citation : sooperkanoon.com/12284

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-05-1997

Reported in : (1998)(98)ELT402TriDel

Appellant : Collector of Central Excise

Respondent : Shree Laminating Ltd.

Judgement :

1. The short question raised in this Departmental Appeal relates to the classification of the Respondents' product which they described as "Paper based Synthetic Resin Bonded Insulator Sheets and Board" classifying these under sub-heading 8546.00 of the Schedule to the Central Excise Tariff Act, 1985 having a rate of duty of 15%.

2. On the basis of test report given by the Deputy Chief Chemist, the Department issued a SCN to the Respondents on 20-10-1987 requiring them to show cause as to why their goods should not be classified under sub-heading 3920.31 instead of sub-heading 8546.00.

3. Rejecting the present Respondents' contention that their products "Phenolic Laminated Sheets" answering IS : 2036-1974 had characteristics of electrical insulator and were used mainly in A.C.Control Panel and were generally sold in the electrical market, the Assistant Collector who adjudicated case held that the product under reference corresponded to the description of "Plastic laminated sheets" and would be covered by sub-heading 3920.31 which included, inter alia,

"Rigid plates, sheets, film, foil and strip of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not". When the goods answered the above description and was sold in the market as "Plastic laminated sheets" as against "Electrical Insulators" the end use of the goods would be of no consideration. Assistant Collector accordingly approved the classification list classifying the product under sub-heading 3920.31.

4. In Appeal the Collector (Appeals) upheld the present Respondent's contentions and reversed the Order-in-Original and directed the product be classified under sub-heading 8546.00. The Department is in Appeal before us against the said order.

5. Shri G.D. Sharma, ld. JDR appeared for the Appellant Collector and Shri J.S. Agarwal, ld. Advocate appeared for the Respondents.

6. It was contended on behalf of the Department that Collector (Appeals) had ignored and rejected the expert opinion of the Deputy Chemist stating that the product which was of "PI grade Phenolic Laminated Sheets" was primarily intended for mechanical applications and electrical properties were of secondary importance and therefore, not having the characteristics of electrical insulators per IS : 2036 -1974. Collector (Appeals) had observed that under Chapter 39 the first part dealt with plastic in primary form and the second part dealt with "waste partings and scrap" and "semi-manufactured articles" of plastics. According to the Departmental Representative no such distinction can be found in Chapter 39. It was also contended on behalf of the Department that the Collector (Appeals) had wrongly relied on Chapter Note 2(n) of Chapter 39 which provided that articles of Section XVI ('Machines and Mechanical or Electrical Appliances') and also containing Chapter 85 are to be excluded from the purview of Chapter 39 since the question of considering whether products under Chapter 85 should be excluded would arise only when the product was first classified as coming within the coverage of Chapter 85. Further, it was also contended that the product 'Laminated Plastic Sheets' was clearly covered under Heading 39.20 and the question whether they were used as Electrical Insulators or not did not arise as Rule 3(a) of the Rules of Interpretation clearly provides that headings providing

specific description shall be preferred to headings providing more general description.

7. Shri J.S. Agarwal, learned Advocate who appeared for the Respondents drew attention to the Test Report extracted in the impugned order and the Remarks made by the Deputy Chief Chemist to the effect that no comments were being offered on the question whether it satisfied the "Electric strength test". He referred to the Appellates Collector's observation that Test Report had not stated that the sample was not electrical insulator. There was also no dispute on the question that the product in question is known in the trade as electrical insulators.

8. We have considered the contentions raised on both sides. We find that the Department has based their case largely on the fact that the product answered the description of sub-heading 3920.31 and therefore, the end use or commercial understanding of the product as electrical insulator cannot be resorted to for deciding the classification. We observe that this view is not supported by the interpretation given by the Supreme Court, the High Courts and this Tribunal. In C.C. v. Bhor Industries 1988 (35) E.L.T. 346 (S.C.) the Hon'ble Supreme Court reiterated with approval the view of the Tribunal that it is how the goods are known in the trade and in trade literature that is relevant and significant and often a decisive factor. In Atul Glass Industries v. CCE 1986 (25) E.L.T. 473 (S.C.) the Apex Court had held that it was the commercial understanding of wind screens that was decisive for purposes of classification and not the type of the material which was used in the product.

9. Having regard to the above discussion we are not inclined to allow the Departmental Appeal. The same is rejected and the impugned order upheld.