Collr. of C. Ex. Vs. Hegal Capsule Industries Private

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-29-1997

Reported in : (1998)(99)ELT250TriDel

Appellant : Collr. of C. Ex.

Respondent : Hegal Capsule Industries Private

Judgement :

1. This is an appeal filed by the Department against the order of Collector (Appeals), Bombay dated 26-2-1990.

2. A notice for hearing was issued to the appellants on 18-11-1996 but nobody has appeared. In the circumstances, we have perused the case records and heard learned DR.3. Learned DR stated that the respondents are manufacturers of Gelatin Capsules classifiable under Chapter 35 and Articles of Plastics classifiable under Chapter 39 of Central Excise Tariff Act, 1985. They were manufacturing in their factory Polystyrene Pins for use in the capsulation machinery calssifi-able under Chapter 84 of Central Exise Tariff Act, 1985. As the said polystyrene pins are used as part of the capsulation machinery, the Assistant Collector classified the product in question under Chapter sub-heading 8422.90. An appeal was filed by the respondents before the Collector of Central Excise (Appeals) stating that the polystyrene pins manufactured by them are classifiable under Chapter 39 of Central Exise Tariff Act, 1985, as the articles of plastics. The Collector (Appeals) ordered that the polystyrene pins were classifiable under Chapter sub-heading 3926.90.

4. It was his submission that every plastic moulded item cannot be called as articles of plastic but, it can be said that the product is manufactured out of plastic. From plastic, various types of parts of machinery is also being manufactured and they are being classified as parts of the machinery and not article of plastic. Section VII, Notes on Plastic and Articles thereof, excludes the recognisable parts of machinery, i.e. parts of aircraft, or vehicles, parts of clock and watches, plastic moulded items, lamps and lighting fittings etc. Such of the articles of plastics which are clearly recognisable as part of the machinery are to be classified according to the Chapters under which such machinery is being classified.

5. It was also his submission that moulded polystyrene pins manufactured by the respondents' company are being solely and principally used as part of capsulation machinery. As such, pins are the part of the machinery which are in the nature of precision parts, involving complex manufacturing process. Polystyrene pins in ordinary course cannot be called as articles of plastics but recognisable as parts of the machinery. Such polystyrene pins are wholly and solely used as part of the capsuling machinery. In view of the Note 2(b) of Section XVI, parts suitable for use for a particular kind of machine is to be classified with the machine of that kind. Since polystyrene pins are suitable for use solely for capsulation machinery they are correctly classifiable under Chapter sub-heading 8422.90 for example housing for capacitors, though being manufactured out of different base products, they are classified as part of electrical capacitors.

6. We have considered the above submissions. We observe that the Department's contentions have a lot of force and the Collector (Appeals) has, erred in deciding the case with reference to Heading 84.80 and the exclusion clause indicated in the HSN under Heading 84.80 Note (g) for the simple reason that the article with which we are concerned is not in the nature of moulds for plastics covered by 84.80 and therefore, we are not concerned with this heading at all. On the other hand, Heading 84.22 covers machinery for capsuling as well.

Furthermore, Heading 39.26 is a residuary entry under Chapter 39 which covers plastics and articles thereof. The Department is correct in pointing out that an article would not fall under this chapter merely because it is made of plastic unless it was covered or could be shown to fall under one of the headings and 39.26 being the residuary entry, would be attracted only if Chapter 39 was attracted in the first instance. Chapter 84, on the other hand, covers machinery and mechanical appliances and parts thereof as well and such machinery and part thereof could be made from any material suitable for the purpose including plastics, wherever necessary. The fact that the polystyrene pins are made from polystyrene plastic does not necessarily mean that they were classifiable under Chapter 39; and if they were recognisable as parts of machinery, the applicability of Chapter 84 is required to be considered. In the present case, the Department is correct in principle but has not produced any other material, technical or otherwise, in support of its contention and learned Collector (Appeals) has also not considered the relevant aspects including Chapter Note 2(b) of Section VI. The impugned order is, therefore, set aside and the matter remanded to Commissioner (Appeals) with the direction that he should duly consider the points rasied by the Department and allow it to produce such technical or other material as may be necessary to substantiate their contention and he may also allow an opportunity to the respondents to appear or submit such other material as may be required and then consider the matter in the light of all relevant provisions including Chapter Note 2(b) of Section VI and then pass appropriate orders in accordance with law.