

Collector of Central Excise Vs. Jaypee Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-17-1998

Reported in : (1998)(101)ELT311TriDel

Appellant : Collector of Central Excise

Respondent : Jaypee Enterprises

Judgement :

1. This is an appeal filed by the department against the order of Collector of Central Excise (Appeals), Bombay dated 25-3-1991.
2. Ld. DR stated that the respondents M/s. Jaypee Entt. had filed a classification list bearing No. 1/88-89, dated 13-2-1989 seeking among other things classification of (1) Plastic Float Ball (2) Plastic PVC Connection (3) Plastic Waste Pipe (4) Plastic Bottle Trap and (5) Plastic Bend under sub-heading 3926.90 claiming NIL rate of duty under Notification No. 53/88, dated 1-3-1988. Since it appeared that the impugned goods are made of plastic and the goods are sanitary fittings as seen from the invoices, a show cause notice dated 17-10-1989 was issued asking them to show cause as to why they should not be classified under sub-heading No. 3922.90 @ 20% ad valorem in terms of Notification No. 53/88, dated 1-3-1988 and the concessional rates under Notification No. 175/86, dated 1-3-1986, as amended, should not be denied. The A.C. classified these products under sub-heading No.3922.90 @ 20% ad valorem and also allowed benefit under Notification No. 175/86, dated 1-3-1986, as amended.

3. The assessee filed an appeal. The Collector (A) held that the parts of the sanitaryware made from plastic materials will be properly covered only in heading 39.26 as articles of plastics on the ground that the Tariff Headings 3922.90 does not include parts of sanitary fittings and the tariff clearly contemplated a different status to "Parts" of sanitarywares as distinct from the sanitaryware proper.

4. It was department's contention that the products are independently and admittedly identifiable as parts of sanitaryware. While deciding the classification of "Parts" under new Excise Tariff Act, 1985, it has been clearly mentioned that by and large, parts are generally classifiable in the same heading number in which the main item falls, provided there is no separate/specific heading number covering such parts. In respect of Chapter 39, chapter notes and section notes do not give any clue as to how the parts are to be classified in Chapter 39.

But Section Note 2 of Section XVI gives an indication regarding such classification. In the subject case, there is no separate headings for the subject parts of sanitaryware. In any case, the impugned plastic parts of sanitaryware would be more close to the heading sanitaryware of plastics rather than to the heading "Other articles of Plastics".

Even in terms of Inter-pretary Rules 3(a) the heading which provides more specific description, shall be preferred to heading providing a more general description.

5. Just because parts are specifically included in the headings for sanitaryware in respect of items of Chapter 73, 74 and 76 and no such inclusion is there in respect of Chapter 39, one cannot say that scheme of tariff is different in respect of parts of sanitaryware of plastic, particularly in view of the reasons given above.

6. Ld. Counsel for the respondents submitted that amongst the products manufactured by the respondents are the parts of sanitaryware which have been claimed for classification under sub-heading No. 3926.90. The Asstt. Commissioner who decided on the classification of the said products came to a finding that the parts of sanitaryware should get classified under 3922.90 being parts of sanitaryware though there were no provisions for parts of sanitaryware in 3922.90. Respondents went in appeal to Collector (A) who admitted that the claim

of the respondents for classification of the subject products under 3926.90 on the following grounds as argued before him.

(a) Sub-heading 3922.00 provides only for sanitaryware and not for parts.

(b) In Chapter 73, 74 and 76 in each there is clear heading for sanitaryware and parts unlike in Heading 3922.00 and hence parts of sanitaryware should come under the residuary Heading 3926.00 there being no other clear heading.

The appellant appears to have referred to something incomplete. In view of clear heading provided for "parts" under Chapter 73, 74 and 76, the absence of heading for parts under Chapter 39 appears to have been done with the intention of putting 'Parts' of goods of Chapter 39 under the residuary item 3926.00 only. Merely because there is heading for sanitaryware, 'Parts thereof cannot be thrust under the said heading.

Reliance on provisions of Rule 3(a) of interpretary rule is also not convincing. To equate 'Parts' with the goods on the basis of note of Section XVI is not correct.

7. He further submitted that CEGAT in the case of Jyoti Plastics -1993 (64) E.L.T. 291 has decided that plastic nuts and bolts are classifiable under Heading 39.26 because there is no separate heading.

The CBEC has issued instructions to classify cassette housings/casings, tubs, rollers and stoppers used in the cassettes falling under Chapter 85 to be classified under Heading 3926.00 under an order made under Section 37B of Central Excise Act, 1944 [reported at 1994 (73) E.L.T.T-25].

Delhi Collectorate Trade Notice No. 68/94-C.E., dated 1-12-1994 reported at 1995 (75) E.L.T. T-32 Plastic pipes used for protecting electric installations are classified under Chapter Heading 3926.00, the residuary heading.

Thus residuary Heading 3926.00 is being chosen for classification of those products not clearly discernible to fall under other headings. In subheading 3925.30 where parts are mentioned there is no mention of parts in other sub-headings in Heading 39.25 and therefore parts of other products of sub-heading

under Heading 3925.00 will come under 39.26 only. Therefore parts of sanitaryware should fall under residuary Heading 3926.00 only.

8. We have considered the above submissions. We observe that the department's arguments have some force. The items in question are admittedly parts of sanitaryware. Sanitaryware of plastic are undisputably classifiable under Heading 3922.90 and we are concerned here only with the question of classification of the aforesaid parts thereof. The rival entries are 3922.90 and 39.26. In this respect we find that the latter is a residuary entry, and therefore will be attracted only if no other heading was applicable. Therefore, what we have to see basically is whether they get excluded from 39.22 or not (since no other heading has been claimed for them).

9. In this regard we see that the respondents have cited a number of cases and trade notices including the order in the case of Jyoti Plastics (*supra*) but this case relates to plastic nuts and bolts which were classified under 39.26 on the ground that they were articles of general use. Similarly, the CBEC instructions and trade notices relate to articles of general use. Thus for e.g. plastic pipes can be used for many purposes including electric installations and the same can be said of various types of housings and casings. In the present case what is important to note is that Heading 3922 does not merely cover sanitaryware as such but even parts of such sanitaryware for e.g.

lavatory seats and covers can only be used as parts of sanitaryware and if these were classifiable under sub-heading 20 then other parts would naturally fall under subheading 90 which covers 'OTHERS'. The analogy drawn from those of other items and cases therefore does not help us in clinching the issue in respect of the items in question. In other words in general we cannot say that all parts of sanitaryware are excludible from 39.22 or will fall under 39.26. We have to examine each item on merits. Since in the present case plastic float ball can be used not merely in sanitaryware but also in water tanks, etc. and similarly, the PVC pipes and connections are of multiple uses and the department has not produced any evidence to show that the items in question have been specifically designed so as to be usable only with sanitarywares or had any special features

because of which they can be utilised as a part of sanitaryware only, the department's case has remained unsubstantiated in respect of the items. In the circumstances, the ratio of the case law, trade notices and Board's instructions cited by the respondent would advance their cause and in the absence of anything to the contrary having been brought to our notice, we hold that there is no reason to interfere with the conclusion of the Id. Collector. The department's appeal is therefore rejected.

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