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Collector of Central Excise and Vs. Pari Plast Private Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-04-1998

Reported in : (1998)(61)ECC255

Judge : S Bhatnagar, Vice-, J Balasundaram

Appellant : Collector of Central Excise and

Respondent : Pari Plast Private Limited

Judgement :

1. These are appeals against the order of Collector of Central Excise (Appeals), Ahmedabad dated 30.5.91 involving a common issue.

2. The respondents have not appeared in spite of notice. However, since prima facie. the matter appears to be a settled issue. We have heard learned DR and perused the records.

3. Learned DR stated that the respondents are engaged in the manufacture of HDPE Tapes from HDPE granules. They had filed classification list under sub-heading No. 3926.90 attracting nil rate of duty under Notification No. 53/88 dated 1.3.88 on the ground that these tapes were articles of plastics. The A.C. classified their product under Sub-heading No. 5406.90 and confirmed the demand of duty.

The Collector (Appeals) allowed the parry's appeal, inter alia, on the ground that the HDPE tapes are manufactured of HDPE granules; As such, these cannot be considered to be made of synthetic textile materials.

Even in trade parlance, the product is referred to and is known as HDPE tapes and not as article of textiles. In view of this matter, HDPE tapes cannot be considered as articles of textile falling under Heading No. 54.06.

4. He further stated that the department's contention is that respondents had manufactured HDPE tapes of width not exceeding 5mm which are used in the weaving of sacks and such tapes are correctly classifiable under Sub-heading No. 5406.90 and such tapes exceeding width 5mm are classifiable under Chapter 39. Section note 2(D) of Section XI defines the term synthetic in relation to fibres and filaments and textile material respectively. Synthetic textile material of organic polymer is produced by manufacturing process by polymerisation of organic monomers. HDPE is polymer of polyethelene.

Therefore, HDPE tapes manufactured out of HDPE granules is a textile material and falls within Chapter 54. As per Chapter note 2(K) of Chapter 39, articles of Section XI (Textile and Textile articles) are excluded from the purview of Chapter 39.

5. Therefore, HDPE tapes below 5mm width being a textile material are not covered under Chapter 39 and would fall under Chapter 54. Chapter note 10 of Chapter 39 reads "In Heading Nos. 39.20 and 39.21, the expression (plates, sheets, film, foil and strip other than those of Chapter 54). it follows that strips of plastics of width less than 5mm falls under Chapter 54. Strips and the like of synthetic textile materials (5406) are described at Note (2) page 754 of HSN; it says "the strips of this Heading are flat of width not exceeding 5mm either produced as such by extension or cut from wider strips or from sheets".

These HDPE tapes are received by cutting of wide strips and are not having width exceeding 5mm. Therefore, by virtue of Section note 2(D) of Section XI, Chapter note 2(k) of Chapter 39 and explanation under heading 54.06 at page 754 of HSN, the said goods are classifiable under 5406.90 and chargeable to duty at the appropriate rate. It is only those tapes whose width exceeds 5mm which shall be classifiable under Chapter 39 and up to that extent the decision of the M.P. High Court is applicable. However, in this case, the width is less than 5mm, therefore, the product is correctly classifiable under Chapter 54.

Notification No. 148/90 pertains to strips falling under Chapter 39. It is only those strips having width more than 5mm which may be classified under Chapter 39. Thus, notification No. 148/90 does not apply to Chapter 54.

6. We have considered the above submissions. We observe that Ld.

Collector (Appeals) has applied the ratio of Tribunal's judgment in the case of M/s. Shri Radha Industries reported in 1983 ELT 379 and Hon'ble High Court of Madhya Pradesh in the case of M/s. Raj Pack-well holding that HDPE tapes are nothing but strips of plastics which were used in the weaving of sacks and are correctly classifiable under Sub-heading No. 3920-32. The Collector's order is, therefore, upheld and the appeal of the department as well as the are rejected and cross objection is also disposed of in the above terms.

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