Camlln Ltd. Vs. Commissioner of Central Excise

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SooperKanoon Citation : sooperkanoon.com/13593

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-04-1998

Reported in : (1998)LC698Tri(Mum.)bai

Appellant : Camlln Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Application is for waiver of deposit of Rs. 35.17 lakhs and penalty of Rs. 10 lakhs.

2. Advocate for the applicant says that the demand and the penalty follow on the finding of the Commissioner that plastic crayons composed of plastic and wax out of which plastic crayons are imported classifiable under 3204.19. He contends with the finding of the Commissioner that the product is marketable because a similar product was imported by M/s. Luxor Pen Co. [as noticed by this Tribunal's decision in 1994 (70) E.L.T. 294] is incorrect because the product imported by Luxor Pen Co. is different. He contends that the goods have acquired the essential characteristics of crayon and since they can be used to colour on paper and other suitable substance are to be classified without payment of duty. He further contends that if duty is payable on the product in question, Modvat credit of the duty paid on the inputs which amount to Rs. 18.77 lakhs will be available. He contends that the department was aware of coming into existence of the product from various documents which were submitted under rule 56B and from the visits of officers.

3. Prima facie the commodity imported by M/s. Luxor Pen Co. and dealt with in the Tribunal is not dissimilar to the goods under consideration. It is described in the order as irregular chips made of compost of synthetic resin wax and colouring matter. The samples of the product, which was produced to us are of two kinds one is in the form of irregular rectangular blocks and the other in the form of hard irregular lumps. The goods have acquired the essential character of crayons since they can be used as crayons and subsequent processes such as shaping. This cannot be said of the other sample. We also note that Modvat credit paid on the inputs would be available. After deducting the Modvat credit the duty payable would be Rs. 16.41 lakhs. We consider it appropriate to ask the applicant to deposit half of this amount within two months from today thereupon we waive deposit of the remaining amount of duty and penalty and stay its recovery. Prima facie the applicant does not have a case on limitation since permission under rule 56A relating to wax crayons are completely different products and there is no material that the applicant had made known to the department that the product now under consideration was coming into existence.