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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-23-1998

Reported in : (1999)(108)ELT247Tri(Mum.)bai

Appellant : Apollo Tyres Ltd.

Respondent : Commissioner of C. Ex. and Customs

Judgement :

1. Since we find that the issue - Classification of rubberised/calendered dipped fabrics involved in these appeals is covered by precedent decisions of the Tribunal, after hearing both the sides, we grant stay and with, the consent of both the parties, we take up the appeals for disposal.

2. The appellants manufacture tyres falling under Chapter 40 of the Central Excise Tariff Act. The issue in these appeals relates to levy of additional Excise duty on the rubberised/calendered dipped fabrics cleared by the appellants for captive consumption. The appellants had claimed classification of these goods under Heading 59.05 covering rubberised textile fabrics other than those of Heading 59.02.

Proceedings were initiated against the appellants for classifying the goods under 59.02 which covers tyre cord fabrics of high tenacity yarn of polyamides polyesters or viscose rayon, and the sub -heading 5902.10 covers such fabrics of polyamides.

3. The ld. Sr. Counsel Shri A. Hidayatullah sub mitted before us that the appellants had sub mitted before the Commissioner that the matter of classification of tyre cord calendered/rubberised fabrics stands settled by two decisions of the Tribunal in the case of Falcon Tyres Limited v. Collector -1996 (88) E.L.T. 450 (Tribunal) as also in the case of Vikrant Tyres Ltd. v. Collector -1997 (90) E.L.T. 178. In both these decisions, the Tribunal had held that calendered fabric used captively in the manufacture of tyre would be classifiable under Heading 59.05 of CETA (now 59.06). The ld. Sr. Counsel further pointed out that the appellants had also relied upon Board's clarification on the classification of the goods conveyed through the Trade Notice No.62/87, dated 29-8-1987 of the Bombay-I Collectorate which was based on the Board's Circular No. 10/87-CX. I, dated 29-7-1987. In this clarification also the Board examined the classification of the dipped fabrics; whether it is under Chapter 54 or 59 of CETA and clarified that the dipped fabric has to be considered as rubberised fabrics and classified under Heading 59.05 of CETA. However, the Commissioner in the impugned order has not dealt with these precedent decisions and Board's clarification. But the findings in the impungned order to classifying the goods under sub -heading 5902.10 are largely based on the fact that in some of the classification lists filed by the appellants herein in January, 1995 and February, 1996, they had claimed classification of the goods under Heading 5902.10 and in such a situation, the Commissioner has come to the conclusion that there will be thus no dispute at all for classifying the goods under Heading 59.02 which was the origin of the present procedings. However, the ld. Sr.

Councel urged that the Assistant Commissioner himself has sub sequently issued show cause notice not accepting their classification as claimed but proposing to classify the goods under Heading 59.05. It was further argued that the Commissioner ought to have dealt with the precedent decisions and clarification of the Board which he has failed to do and the Commissioner's order, therefore, goes against the law laid down by the Supreme Court in this regard in the case of Collector v. Usha Martin Industries -1997 (94) E.L.T. 460 (S.C.) wherein the Supreme Court has referred to the earlier judgment of that Court and observed that the Revenue cannot be permitted to take a stand contrary to instructions issued by the Board. It is a different matter, observed the Court, that an assessee

can contest the validity or legality of a departmental instruction. But that right cannot be conceded to the department. The Supreme Court also in that same judgment quoted the precedent judgment in the case of Poulose and Mathen v. Collector -1997 (90) E.L.T. 264 to say that where the decision regarding the classification was not clear to both the department and the assessee and where two opinions are possible, the assessee be given the benefit of doubt. The ld. Sr. Counsel submitted that following the precedent decisions of the Tribunal and the Board's instructions on the classification, the goods clearly would fall for assessment under Chapter 59.05 and not under 59.02 and that when they are so classifiable under Heading 59.05 there is no question of levy of additional duty of Excise on the said goods.

4. Shri K.L. Ramtake, the ld. DR, referred to the impugned order and the findings therein and submitted that the Commissioner in the impugned order has given his findings on the classification largely based on the appellant' own understanding about the classification of the goods as reflected in their classification lists of 1995-96 and hence did not have occasion to deal with the implications of the precedent Tribunal's decisions, and the matter of duty liability perhaps may have to be redetermined.

5. We have considered the rival submissions. We find that the classification of the calendered/rubberised tyre cord fabrics captively consumed in the manufacture of tyres which also undergoes prior process of dipping, as being assessable to duty under Heading 59.05 (now 59.06) of CETA has been settled by the Tribunal decisions in the case of Falcon Tyres and Vikrant Tyres (supra). The Board has also clarified that the product falls for classification under that heading. The Supreme Court decisions cited above make it clear that the departmental authorities are bound by such clarification and are to follow the decisions on classification by the higher forum. Though the Commissioner in the impugned order has not dealt with the implications of the precedent decisions and clarification of the Board, we find that the matter is settled clearly enough about the classification of the goods in dispute which have to be followed by the departmental authorities. We are also of the view that classification claimed by the assessee will not be determinative of the issue and cannot be made the basis of

determining correct classification, especially when there are binding judicial pronouncements and clarification by the Board thereon.

Therefore, we allow the appeals by holding that the product is correctly classified under Heading 59.05 (now 59.06) of CETA and the duty demand, if any, on applying such classification for the product may be redetermined by the Commissioner, according to law. We also set aside the order imposing penalty on the appellants.

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