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Collector of C. Ex. Vs. Vijay Flexible Containers P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-09-1998

Reported in : (1999)(105)ELT164TriDel

Appellant : Collector of C. Ex.

Respondent : Vijay Flexible Containers P. Ltd.

Judgement :

1. The respondents herein are manufacturers inter alia of "printed shells" and "printed hinge lid blanks" for cigarette packets. They had filed classification lists on 9-3-1982 and 23-4-1982 claiming classification of the above items under T.I. 68 together with the benefit of exemption from duty in terms of Notification 104/82, dated 28-2-1982. Vide Order-in-Original dated 13-6-1983, the Assistant Collector of Central Excise held that both the items in dispute fell for classification under T.I. 17(4) and also denied the exemption under Notification 66/82, dated 28-2-1982 since the products were in the nature of printed boxes. The respondents preferred an appeal before the Collector of Central Excise (Appeals), Bombay who vide his Order-in-Appeal dated 26-6-1986 set aside the order of the Assistant Collector, holding that both the items in dispute are classifiable under T.I. 68. The Department filed E/2449/86-C against this appellate order and the appeal was disposed of by the Larger Bench of the Tribunal vide Final Order No. 118/98-C, dated 6-3-1998 1998 (100) E.L.T. 158 (Tribunal) holding that the outer shells, slides and hinge lid blanks of cigarette packets made from printed paper board were classifiable under T.I. 68 and not under T.I. 17(3) or T.I. 17(4) and that the

benefit of Notification 104/82 is not available to these items.

2. In the meanwhile, the respondents filed a refund claim for Rs. 55,78,298.39 on 20-10-1986 in respect of duty paid under protest during the period from 5-3-1983 to 28-2-1986 and they also filed a supplementary claim for Rs. 24,427.87 for the same period. By Order dated 19-10-1987, the Assistant Collector held that the respondents were entitled to refund only of the difference between the duty paid under T.I. 17(4) and T.I. 68 and after deducting a further amount representing duty on fortuitous benefit, the Assistant Collector sanctioned the refund of Rs. 16,27,498.74. The respondents filed an appeal against this refund order to the Collector (Appeals) who, vide Order dated 20-6-1988, set aside the Assistant Collector's order dated 19-10-1987 and remanded the matter to the Assistant Collector to re-examine the applicability of Notification 104/82 to the printed shells and printed hinge lid blanks -according to the assessees, these two products were covered by Sl. No. 24 in the annexure to Notification 104/82 which reads thus "all products of paper industry including newspaper and printed periodicals". (The Department also filed an appeal against the Assistant Collector's order dated 19-10-1987; however, no information is forthcoming as to the fate of this appeal).

The Revenue has preferred E/2865/88-C against the order dated 20-6-1988 of the lower appellate authority; while E/3644/88-C has been filed by the respondents/assessees against the same order.

3. None was present for the assessees in spite of notice; hence, we heard the learned SDR, Shri H.K. Jain and perused the records and the Larger Bench decision cited supra, which squarely covers the issues in these two appeals.

4. Following the ratio of the Larger Bench decision cited supra we hold that the printed shells and printed hinge lid blanks manufactured by the respondents herein are classifiable under T.I. 68 and deny the benefit of Notification 104/82 to these products.

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