Makkar and Loomba Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-24-1998

Reported in : (1999)(63)ECC198

Judge : L Ram

Appellant : Makkar and Loomba

Respondent : C.C.E.

Judgement :
1. The question referred to me for determination in this appeal filed by M/s. Makkar & Loomba, New Delhi is whether the item--adhesive coated fabric was classifiable under sub-heading No. 5909.00 of the Central Excise Tariff or it was classifiable under sub-heading No. 5906.90 of the said Tariff.

2. I have heard Shri R. Swaminathan, Consultant for the appellants and Shri A.M. Tilak. JDR for the respondents/Revenue.

3. The Id. Consultant referred to the clarification issued by the Central Board of Excise & Customs under F.No. 59/3/90 CXI (Circular 24/90 CXI) dated 23.11.90 wherein it has been clarified that the adhesive coated fabrics was classifiable under sub-heading No. 5909.00.

He also referred to the Supreme Court's decision in the case of Ranadey Micronutrients v. Collector of Central Excise to plead that although the circular was issued subsequent to the impugned order, the Revenue could not plead against the said Circular.

4. In reply Shri A.M. Tilak, JDR submitted that in view of the Board's Circular, the view taken by the Id. Member (J) was correct. He also submitted that similar view had been taken by the Tribunal in the case of Collector of Central Excise, Belgaum v. Unitac Industries .

5. I have carefully considered the matter. I find that the classification as indicated in Board's Circular with regard to the .product adhesive coated cotton cloth was under sub-heading No. 5909.00 which covered "all other textile products and articles of a kind suitable for industrial use (for example textile fabrics, combined with one or more layers of rubber, leather or other material, bolting cloth, endless felts of textile fabrics, straining cloth). I also find that in the Tribunal's decision in the case of Collector of Central Excise vs.

Unitac Industries it had been held that the cloth based self-adhesive tapes for industrial use were classifiable under sub-heading No. 5909.00 and not under S.H. No. 5906.90 of the Tariff.

The Departmental Representative confirmed that the goods are the same as were the subject matter of the Board's Circular and that of the Tribunal's clarification aforesaid.

6. In view of the submissions made by both the sides, I agree with the views taken by the learned Member (J) that the goods in question were classifiable under sub-heading No. 5909.00.

7. The file may now be placed before the Original Bench for further necessary action.

In terms of the majority order the item "Adhesive Coated Fabrics" falls under sub-heading 5909.00 as claimed by the appellants and in that view of the matter, the appeal is allowed.