

Collector of Central Excise Vs. Star Plastic

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-29-1998

Reported in : (1999)(105)ELT170TriDel

Appellant : Collector of Central Excise

Respondent : Star Plastic

Judgement :

1. The respondents herein had filed classification lists effective from 1-4-1990 in respect of plastic articles such as PVC jars with caps, PVC shampoo bottles, plastic caps for shampoo bottles, etc. claiming classification under GET sub-heading 3923.90 attracting 15 % BED + 5% SED and plastic moulds for making chocolates claiming classification under GET Sub-heading 3926.90 attracting 15 % BED and 5 % SED in terms of Sl. No. 40 of the table annexed to Notification 53/88, claiming Modvat credit on inputs. The lists were approved by the Assistant Collector on 10-9-1990. The Department was aggrieved by the approval accorded to the classification lists and hence filed an appeal before the Collector of Central Excise (Appeals) to decide the admissibility of Sl. No. 40 of Notification 53/88. The lower appellate authority upheld the order passed by the Assistant Collector; hence this appeal by the Revenue.

2. We have heard Shri H.K. Jain, learned SDR and Shri Rajesh Kumar, learned Advocate.

3. We have gone through the Exemption Notification 53/88-C.E., dated 1-3-1988. Exemption against Sl. No. 39 is a conditional exemption. In case those conditions are not fulfilled, then the goods were to be assessed to duty against Sl. No. 40 of the table to the Notification.

It has been held by the Tribunal in the case of CCE, New Delhi v. Thermopack Industries 1998 (27) RLT 133 that it is the option of a manufacturer as to which Sl. No. of a Notification to avail of, for the purpose of exemption. We find that Sl. Nos. 39 and 40 are not similarly worded e.g. there is no condition attached against Sl. No. 40 of the Notification. It is the option of the assessee to pay duty and not avail full exemption in terms of Sl. No. 39, which is a conditional entry. Following the ratio of the order cited above, we hold that the benefit of exemption in terms of Sl. No. 40 of Notification 53/88 is available to the respondents and accordingly uphold the impugned order and reject the appeal.

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