Packart Press Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-18-1998

Reported in : (1999)LC492Tri(Delhi)

Appellant : Packart Press

Respondent : Collector of Central Excise

Judgement :

1. The classification of printed catch covers sample folders manufactured by the appellants herein arises for determination in this appeal - according to the assessees, the item falls for classification under T.I. 68 of the Schedule to the erstwhile Central Excise Tariff upto 28-2-1986 as product of printing industry and entitled to exemption in terms of SI. No. 24 of Notification 234/82, dated 1-11-1982 or in the alternative the items were classifiable under T.I.17(1) and eligible to the benefit of exemption under Notification 63/82, dated 28-2-1982 as converted type of paper, and for the period from 1-3-1986 onwards, the item fell under CET sub-heading 4901.90 as product of printing industry or in the alternative, it was covered under Chapter Heading 48.17 as pouches and exempt from duty in terms of Notification 63/82 and Notification 49/87, dated 1-3-1987 as converted type of paper. The adjudicating authority has confirmed classification under CET sub-heading 4818.90 for the period from 28-2-1986 to 28-2-1988 and thereafter under CET sub-heading 4819.90. He has confirmed a duty demand of Rs. 3,51,456.13 on manufacture and clearance of the disputed item during the period 1985-86 to 1989-90 (upto November 1989) and has also imposed a penalty of Rs. 25.000/- on

the appellant herein.

2. We have heard Shri J.M. Sharma, learned Advocate and Shri Satnam Singh, learned SDR.3. The process of manufacture of printed catch covers/sample folders is as under: "Maplitho/art cards are purchased by the appellants, printed according to the customers requirement then cut to required size, then stripped and then pasted in the factory. These catch covers are supplied to the customers who place strips of medicinal tablets in them." "a covering case or box or sheath, etc as defined in Chambers Twentieth Century Dictionary. Such items have been held to fall for classification as cases under sub-heading 4818.13 of the CETA 1985 in the case of CCE, Bangalore v. India Coated Cartons Ltd. reported in 1996 (81) E.L.T. 373 which decision was followed in the case of CCE, Bangalore v. Fine Prints P. Ltd. reported in 1996 (87) E.L.T. 296 - the latter decision specifically covered printed catch covers for medicines. Following the ratio of these decisions, we hold that the item in dispute falls for classification under CET sub-heading 4818.13 for the period from 28-2-1986 to 28-2-1988 and thereafter, under CET sub-heading 4819.12. The case law relied upon by the learned Counsel viz. the decision of the Hon'ble Supreme Court in the case of Metagraphs P. Ltd. v. CCE, Bombay reported in 1996 (88) E.L.T. 630 (S.C.) is distinguishable because the product in dispute before the Supreme Court was printed aluminium labels wherein the Apex Court held that it was a product of printing industry, for the reason that printing of the labels is not incidental to its use but primary as it communicated to the customer about the product and this serves a definite purpose and the printing industry by itself has brought the label into existence. In this case, however, it is not the printing industry which has brought the catch covers sample folders into existence. The other decision cited by the learned Counsel viz. CCE, Patna v. United Paper Products reported in 1995 (80) E.L.T. 122 also does not advance their case since the product in dispute therein was exterior container for explosives, a card board case closed on all four sides but with top and bottom open with arrangement for closing by unattached four flaps, which is different from the product in dispute in the present appeal. We further take note that in the United Paper Products case cited supra, the Tribunal has held that such boxes are printed card board boxes not eligible to the benefit of Notification 66/82 dated 28-2-1982, and there was no dispute on the classification of the item

which was covered under T.I. 17(3) of the Schedule to the erstwhile Central Excise Tariff." 4. In the light of the decisions of the Tribunal in the case of India Coated Cartons and Fine Prints (P) Ltd. cited supra, we hold that the printed catch covers/sample folders manufactured by the appellants herein fall for classification under CET sub-heading 4818.13 for the period 28-2-1986 upto 28-2- 1988 and thereafter under CET sub-heading 4819.12. Since the adjudicating authority has not recorded any finding on the classification of the product for the period upto 1-3-1986, we remand the matter to the jurisdictional Commissioner for de novo adjudication on this point. We also take note of the learned Counsel's contention that there is no finding on the applicability of the extended period of limitation, which was disputed by the appellants before the adjudicating authority, on the ground that they were under the bonafide belief that the item in dispute was an article of printing industry and covered by exemption Notifications and hence there was no deliberate or wilful intention to evade payment of duty. This aspect is also remanded to the adjudicating authority who shall pass fresh orders on time bar and on classification of the product for the period prior to the coming into force of the new Tariff, after extending a reasonable opportunity to the appellants of being heard in person.