Commissioner of Central Excise, Vs. Bimb Offset Division

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-12-1998

Reported in : (1999)(110)ELT963TriDel

Appellant : Commissioner of Central Excise,

Respondent : Bimb Offset Division

Judgement :

1. The respondents herein received duty paid offset printing plates from their customers and processed them with the help of exposing unit, whirler and duty paid plate processor. They claimed that the activity of offset plate setting did not amount to manufacture as they only exposed and developed the printing plates and no new product emerges as a result of the activity undertaken by them. The Assistant Collector of Central Excise held that there was a change in the name, character and use of exposed offset printing plates, and un-exposed printing plates and thus the test of manufacture of new commodity was satisfied. He upheld classification of exposed offset printing plate under CET sub-heading 8422.00.

2. On appeal, the lower Appellate authority upheld the Department's stand relating to manufacture; however, he modified the Assistant Collector's order by classifying the product under Chapter Heading 37.05. In the appeal before the Tribunal, the Department seeks restoration of the Assistant Collector's order of classification under CET sub-heading 8442.00.

3. The learned DR Shri H.K. Jain submits that since Heading 8442 specifically covers printing plate and since HSN Explanatory Notes under Heading 84.42 clearly states that since sensitised plates consisting of metal or plastic coated with sensitised photographic emulsion, are excluded from the Heading 84.42 and are classifiable under Heading 37.01, the specific Heading 84.42 is appropriate for the product as contented with 37.05 which covers "photographic plates and films exposed and developed other than cinematographic film." 4. Opposing the prayer of the Revenue, Shri B.N. Rangwani, learned Advocate submits that it is not disputed by the lower authorities that what the respondents received are already duty paid unexposed printing plates and that what the respondents carry out is only the process of exposure by temporary formation of images on the plates which can be re-used several times. He draws our attention to the impugned order on the factual position that offset printing plates received from customers are exposed with the help of light to offset emerges on the plate and what emerges after sensitising and developing, is a photographic film exposed and developed. We find that it has not been the case of the Department either before the Assistant Collector or before the Collector (Appeals) or even before the Tribunal that respondents received goods other than printing plate unexposed. The learned DR seeks to urge before us that the sensitising of the printing plate is actually for the purpose of printing and without sensitising, the item cannot be considered as a printing plate and that it becomes a printing plate only in the hands of the respondents. However, we find that this is not the finding either of the Assistant Collector or the Collector (Appeals) and the claim of the respondents that what they received from their customers was unexposed printing plates falling under Chapter 84.42 has not been rebutted. In other words, there is nothing on record to controvert the claim of the respondents that what they received was sensitised unexposed printing plates on which they carried out the process of printing and developing. Therefore, Heading 37.05 would be the appropriate entry since this heading covers photographic plates and films exposed and developed other than the cinematograpic films. In this view of the matter, we hold that classification upheld by the lower authority under Heading 37.05 is correct and accordingly we confirm the impugned order and reject the appeal.