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Central TIn Works Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-03-1999

Reported in : (1999)(83)LC314Tri(Mum.)bai

Judge : P Jain, Vice-, A Unni

Appellant : Central TIn Works

Respondent : Cce

Judgement :

1. Matter called. None for me appellants despite notice of hearing.

They have however, desired that the case be decided on merits taking into account Tribunal's judgment in the case of Azad Tin Factory v. CCE as stated in their letter dated 22.2.1999. Hence, we have heard the ld. SDR Shri R.K. Sharma.

2. Briefly stated the facts of the case are as follows: The appellants herein manufactured printed, lacquered and varnished sheets out of duty paid plain sheets. In view of this description of the goods under tariff sub-heading 7210.30/7212.30, the appellants herein were issued show cause notice on 29.9.1988 as to why the duty be not collected and recovered from them for not paying duty under the sub-heading for the period 1.3.1988 to 20.6.1988. The value of the clearance during the said period for the subject sub-heading was arrived at Rs. 8,14,118.80.

The Assistant Collector confirmed the demand of duty on the said goods.

Thereafter the appellants herein filed an appeal before the Collector of Central Excise (Appeals) Bombay. The said Collector also rejected the contention of the appellants. However he remanded the matter to the adjudicating authority for considering whether the appellants were entitled to the benefit of notification No. 175/86 in respect of the said printed, lacquered or varnished sheets. The appellants contentions that they were entitled to the benefit of notification No. 202/88 dated 20.5.1988 as amended by notification No. 218/88 dated 21.6.1988 was not accepted because the period involved in the case before him was prior to the said amending notification No. 218/88 dated 21.6.1988.

3. On remand the Assistant Collector concerned apart from examining the question of extending the benefit of notification No. 175/86 dated 2.3.1986 in respect of this particular case alone also examined the five show cause notices issued on different dates for the period February, 1990 to March 1991. The Assistant Collector came to the conclusion in order-in-original dated 22.7.1991 that the benefit of notification No. 175/86 dated 1.3.1986 could be extended to the appellants herein and therefore, he withdrew all the demands including the demand in the case before the Collector (Appeals) who passed the order-in-appeal dated 13.3.1990.

4. Against the aforesaid order dated 22.7.1991, the Collector of Central Excise, Bombay in exercise of his powers under Section 35E filed application (to be treated as an appeal) to the Commissioner (Appeals). In the impugned order the Collector (Appeals) Bombay has denied the benefit of notification No. 175/86-CE to the appellants herein. Hence this appeal by the appellants before us. We have gone through the appeal memo before us. Following issues are for our decision in the present appeal: (1) Whether notification No. 175/86-CE would be applicable to the aforesaid product of the appellant during the period 1.3.1988 to 20.6.1988.

(2) Whether the benefit of notification No. 202/88-CE would be available to the appellants for the period subsequent to 21st June, 1988 and for the period prior to this date.

5. We have heard ld. SDR, Shri R.K. Sharma for the respondent Revenue here and also gone through the memo of appeal filed by the appellants.

We observe that the benefit of notification No. 175/86-CE has been rightly denied by the lower appellate authority inasmuch as lacquered, printed or varnished sheets falling under tariff sub heading 7210.30 or 7212.30 were not covered under the said notification No. 175/86-CE during the period 1.3.1988 to 20.6.1988. Benefit of notification No.202/86-CE as amended by notification No. 218/88 dated 21.6.1988 will also be not applicable to the painted, lacquered or varnished sheets to the period earlier than 21.6.1988 because the notification cannot be given any retrospective effect; it can be effective only from 21.6.1988.

6. However, for the period subsequent to 20.6.1988, the appellants' products would get the benefit of notification no. 202/88-CE dated 20.5.1988 as amended by notification No. 218/88 dated 21.6.1988, in view of the Tribunal's judgment in the case of Azad Tin Factory Pvt.

Ltd. v. CCE 'printed sheets' would be covered by the aforesaid expression namely 'printed, lacquered or varnished sheets'.

7. In short, the appellants would have a duty liability on the painted or printed sheets falling within lacquered or varnished' only for the period 1.3.1988 to 20.6.1988. This liability has to be quantified by the lower authorities. Appeal disposed of in the above manner.

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