Commissioner of Central Excise Vs. Shubham Polymer Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-21-1999

Reported in : (1999)LC928Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Shubham Polymer Ltd.

Judgement :

1. The assessee, the respondent in this appeal by the Commissioner, was engaged in export of polypropylene tapes fabrics and woven sacks. The woven sacks were exported under Rule 191B. In the course of manufacture of these goods, some waste emerges at each stage i.e. manufacture of tape, manufacture of unlaminated tape and woven sacks. The assessee cleared such waste without paying duty. Notice was issued by the department proposing recovery of duty on such waste. In reply, the assessee contended that the benefit of exemption under Notification 243/79, as subsequently amended, would apply. It also contended that the fabric in question was classifiable under Chapter [Heading] 5408 of the tariff for which duty was nil. It is also contended that the waste of sacks would not be liable to duty not being manufactured product, citing in support of this proposition the Tribunal's decision in Kamat Packaging Pvt. Ltd. v. C.C.E. -1990 (47) E.L.T. 55 was cited. The Assistant Collector did not accept these contentions. He confirmed the demand for duty.

2. On appeal from this order, the Collector (Appeals) found that the products manufactured by the assessees were unconditionally exempted by Notification

243/79. He found that polypropylene waste arising from the manufacture of tape and yarn was unconditionally exempted from payment by Notification 243/79, although he observed that the correct clarification would be under Chapter 39 of the tariff and not under Chapter 54 in view of the judgment of the Madhya Pradesh High Court in Raj Pack Well Ltd. v. Union of India -1990 (50) E.L.T. 201(M.P.)-He found that the Tribunal decision in 1990 (47) E.L.T. 55 would apply to the waste of fabric and bag. He accordingly allowed the appeal and set aside the order impugned in the appeal. Hence this appeal.

3. We have heard the Departmental Representative and perused the papers. Respondent is absent and unrepresented and requests decision on the basis of the submissions. These have been perused.

4. The appeal proceeds on the assumption that the order of the Commissioner (Appeals) holding that the goods are classifiable under Chapter 39 is correct. The contention of the respondent that the Commissioner was not required to determine their classification and that his decision is outside the scope of the proceedings is well taken. The issue before the Commissioner (Appeals) was not classification of the goods. However, we do not disgress further in this. The notification exempted waste arising during the manufacture of polypropylene tapes or yarn falling under Chapter Heading 5401 from duty. Classification of the tapes claimed under Chapter Heading 5401 had been approved as seen from the show cause notice. Waste arising during the manufacture of polypropylene tapes therefore was covered by the exemption notification. This however would not be true of the waste arising in the subsequent stage of manufacture of fabrics from tape.

The notification does not include this and it is not contended that there is any other notification exempting it from duty. Duty was therefore payable on them.In Kamat Packaging Pvt. Ltd. v. C.C.E. -1990 (47) E.L.T. 55 the Tribunal held that high density polyethylene circular bag and waste laminated fabrics waste are not liable to duty because they were not covered by any specific entry in the tariff. Had it been the intention of the legislature to provide for there being no duty it would have done so by specific mention in the proper tariff entry. Therefore, these wastes are not liable to duty. Wastes of all types man-made filament classifiable under Chapter Heading 54 is specified under Heading 5401. Sub-heading 10 is for waste of synthetic filament; sub-heading 20 is for waste of artificial filament and sub-heading 90 is for other waste. Waste arising at the stage of manufacture of sacks will therefore be liable to duty. The fact that the fabric itself is liable to nil duty under Heading 5408 does justify the conclusion that the waste arising in the manufacture of such fabrics, or resulting from the processing of fabrics is exempted in the face of the entries in Heading 5401.90. The order of the Assistant Collector demanding duty other than waste arising out yarn is therefore correct.

7. Appeal is allowed in part. The Assistant Commissioner shall quantify the duty payable as a result of this order and indicate it to the assessee.