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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-10-1999

Reported in : (1999)LC376Tri(Delhi)

Appellant : Vee Bee Industries

Respondent : Collector of Central Excise

Judgement :

1. These appeals are involving common question of law and facts. They were heard together and are being disposed of by this common order.

2. The matter relates to the classification of the Card Cans and parts thereof. The appellants had sought classification thereof under sub-heading No. 8448.00 as accessories of textile machinery, the textile machinery being classifiable under Heading No. 84.45 of the Central Excise Tariff. They had also sought the benefit of exemption Notification No. 175/86-CE., dated 1-3-1986. The Collector of Central Excise (Appeals), Ahmedabad had ruled out the classification of the Card cans or silver cans as parts or accessories of textile machinery and had held that the same were classifiable as articles of plastics or articles of aluminium under sub-heading No. 3926.90 or 7616.90 respectively of the Central Excise Tariff.

3. When the matter was called no one appeared for the appellants. As the matter is very old in which the show cause notices were issued in the year 1990, we are proceeding to deal with the matter on merits after hearing Shri R.K. Sharma, learned SDR. Shri R.K. Sharma, learned SDR submitted that the Card cans and

silver cans were independent separate items and they could not be considered as parts and accessories suitable for use solely or principally for the spinning machine. They have their separate identity and depending upon the material on which they were made, they were classifiable as articles of plastics or articles of aluminium as had been rightly held by the adjudicating and the appellate authorities. He also referred to the Tribunal's decision in the case of Unipol Plastic Industries Pvt.

Limited v. Collector of Central Excise, Ahmedabad reported in 1997 (90) E.L.T. 372 (Tribunal) in which the Tribunal had held that Card cans were articles of plastic and were eligible for the benefit of Notification No. 132/86-C.E., dated 1-3-1986 provided the conditions stipulated therein were fulfilled.

4. We have carefully considered the matter. The appellants were engaged in the manufacture of Card cans of plastic (Polythene) and aluminium.

They had sought classification of such Card cans under sub-heading No.8448.00 as parts and accessories of textile machinery. These Card cans and silver cans are placed along the side of the machinery but they did not form part of such machinery which could independently function even without these cans. These cans were in the nature of recepticals and did not participate as such in the mechanical functioning of the spinning machine. They could also not be called as accessories as has been discussed in para 7 of his order by the Collector of Central Excise (Appeals).

5. They were made of plastic or aluminium depending upon the requirement and even when they have the necessary arrangement for holding silver and releasing the same for spinning etc. they could not be considered as items of machinery.

6. Learned Departmental Representative had referred to the HSN Explanatory Notes under Heading No. 84.48 where it had been mentioned that the roving or silver cans were to be classified according to their constituent material (Refer Page 1253 of the HSN Explanatory Notes Vol.

3).Unipol Plastic Industries Pvt. Ltd. v.CCE, Ahmedabad reported in 1997 (90) E.L.T. 372 (Tribunal) had observed that the Card cans did not satisfy the criteria of machinery parts and were basically the articles of plastics.

8. Keeping in view the nature of the products, their usage and their constituent material, we do not find any ground to interfere with the view taken by the learned Collector of Central Excise (Appeals) Ahmedabad. We do not find any merit in these appeals and the same are rejected. Ordered accordingly.

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