Beico Electrical Insulations Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-1999

Reported in : (1999)(114)ELT755TriDel

Appellant : Beico Electrical Insulations

Respondent : C.C.E.

Judgement :

1. The appellants are manufacturers of, inter alia, laminated non-wovens and were paying duty on those goods under sub-heeding 56.03 of the Central Excise Tariff. A Show Cause Notice No. 13/94, dated 25-3-1994 was issued to the appellants by the Collector of Central Excise, Aurangabad alleging that the goods were correctly classifiable under sub-heading 3920.37 and the appellant is liable to pay differential duty of over Rs. 24 lacs during the period 1989-90 to 1991-92 (upto February, 1992) on account of the wrong classification (and payment of duty at lower rate). It was alleged in the Notice that the assessee had misdeclared the classification and had suppressed the fact regarding pro-dominance of the ingredients which were material for the classification of the goods, thereby attracting the Proviso to Section 11A of the Central Excise Act, 1944 for the purposes of recovering the duty short levied. Classification list from time to time indicating the correct description of the goods and this classification had been approved by the Departmental authorities indicating therein the rate at which the goods are to be assessed and duty paid. The appellants submitted that they had made no suppression of facts or made any misdeclaration and that payment of

duty being at the rate approved by the Departmental authorities, there could be no allegation that there was suppression of fact or mis-declaration. The appellants also submitted that classification of goods is essentially a function of the Departmental authorities and allegation of misdeclaration of classification cannot lie against an assessee. They also submitted that it is settled law in the light of the decision of the Apex Court in Padmini Products [1989 (43) E.L.T. 195 (S.C.)] that the extended period as provided in Section 11A will not be attracted if no suppression or misdeclaration is involved. They therefore, submitted that the entire demand having been issued beyond the normal period of six months was time barred. The impugned order held that the correct classification of the laminated non-woven produced by the appellant was under Chapter Heading 3920.37 of the Central Excise Tariff in view of the pro-dominance of polyester film. The Collector also held that as the important criterion for classification of the goods under 56.03 (as claimed by the appellant) was the composition of the material and as the appellant had withheld the material information in that regard, which had direct bearing upon the assessment of the final product, the charge of suppression of facts and mis-declaration of the product was correctly made. He held as under :- "The act of furnishing incorrect description of the final product, further followed by nondisclosure of the inputs having pro-dominance is held as an intentional act for evasion of duty and the decision in the Padmini Product [1989 (43) E.L.T. 195 (S.C.)] cannot come to the rescue of the assessee." The appellants have reitereated their aforesaid contention regarding time bar of the demand in the present appeal also. They have submitted that they had filed classification lists in 1987 & 88 giving the correct description of the goods in the classification list. The goods were described as "laminated non-wovens" in the classification list, which is the correct description of the goods. They had claimed classification of the goods under Chapter 56 and the same was approved. It is only after the chemical test of the goods in 1992 that the appellant as well as the department felt that the goods may be correctly classifiable under Chapter Heading 39. The appellants have also submitted that even after the chemical test of the samples, a Show Cause Notice dated 29-9-1992 had been issued by the Asstt. Collector of Central Excise, Nasik asking the appellant to explain why the goods should not be classified under Heading 56.03 and subsequently also the jurisdictional Superintendent had been

issuing Show Cause Notices holding the goods to be classifiable under Chapter 56. In these circumstances, there could be no allegation of suppression or mis-declaration of facts against the appellants. The goods were correctly declared and the Departmental authorities approved and checked the classification from time to time. Therefore, this could only be a case of mistake on the part of the appellants and the Central Excise authorities and not of mis-declaration and suppression of facts by the appellants with intent to evade payment of duty.

2. We have perused the records of the case and considered the submissions made during personal hearing. We find that the clearances were always under approved classification lists and the appellants had paid duty at the rates approved in those classification lists. The goods were declared correctly as laminated non-wovens in the classification lists. If the Central Excise authorities required any more details about ingredients or any other details, it was for them to ask for and obtain those particulars before approving the classification list, as Central Excise classification of products is a responsibility of Central Excise officers. In these facts and circumstances, the allegation of misdeclaration or suppression of facts is not sustainable. Therefore, no demand could be raised for the extended period. The Collector's finding to the contrary is clearly incorrect. The appeal, therefore, succeeds on the ground of time bar.

It is allowed with consequential relief to the appellant in accordance with law.