Tisco Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-07-2000

Reported in : (2001)(131)ELT173TriDel

Appellant : Tisco

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in this appeal filed by M/s. Tata Iron Steel Co.

Ltd. (TISCO) is whether Expoxy Polyster Coated Sheets /strips are classifiable under sub-heading 7212.31 and whether slitter edges and side trims are classifiable under sub-heading 7203.20 of the Schedule to the Central Excise Tariff Act, as claimed by them or under sub-heading Nos. 7212.39 and 7212.31 respectively, as confirmed by the Collector (Appeals) in the impugned order.

2. Shri Ravindra Narain, learned advocate submitted that sub-heading 7212.31 covers lacquered/varnished sheets made from hot rolled sheets produced in India and their product Expoxy polyster coated sheets/strips is squarely covered by this sub-heading since these are made out of hot rolled strips. He further submitted that if the impugned product is not considered to be lacquered or varnished, as it is plastic coated, it will not be classifiable under residuary sub-heading 7212.39 as the main heading covers only "Lacquered sheets, varnished sheets, including cuttings of lacquered sheets and varnished sheets." He, therefore, contended that the product in question will fall under sub-heading 7212.31 of the Tariff.

3. Regarding slitter edges and side trims, the learned Advocate submitted that these are waste and scrap of iron and steel which are sent for remelting purposes and these could not under any stretch of imagination could be used as strips. He also mentioned that the condition in which the goods are cleared from the factory is a material factor for determining the classification under the Tariff as held by the Supreme Court in the case of Dunlop India Ltd. v. U.O.I. - 1983 (13) E.L.T. 1566 (S.C). He also relied upon the decision in the case of CCE, Coimbatore v. Dynaspede Integrated System (P) Ltd., 1997 (89) E.L.T. 193 (T) wherein it was held that goods are to be assessed in the form of which they are at the time of their clearance. Finally he submitted that the Department had classified the product subsequently as waste and scrap which is evident from classification list effective from 1-5-1992 and 1-5-1993.

4. Shri Ashok Kumar, learned DR, countered the arguments by submitting that the portion cut from the sheets is nothing but sheet and as such classifiable under sub-heading 7212.31 only. Regarding Expoxy Polyster coated sheets the learned DR submitted that sub-heading 7213.31 covers the products only which are lacquered or varnished and not the sheets coated with plastics and as such the product has to be classified as 'others' falling under 7212.39 of the Tariff.

5. We have considered the submissions of both the sides. The subheading, at the material time reads as under : - Lacquered Sheets, Varnished Sheets including cuttings of lacquered sheets and varnished sheets.7212.31 - Made from hot-rolled sheets produced in India.7212.32 -- Made from cold-rolled sheets produced in India.7212.33 -- Made from tinned sheets produced in India.7212.39 -- Other.

6. The sub-heading only applies to lacquered or varnished sheets and as plastic coated is not covered by the term lacquered or varnished, the product cannot be classified as "other" in the same sub-heading for the simple reason that 'others' will also apply only to lacquered or varnished sheets. In view of this, classification of the product under sub-heading 7212.39 is not appropriate. The product, it is fact, will be classifiable under sub-heading 7212.90 of the Tariff and it is so classified. Regarding classification of slitter edges and side trim, the Apex Court has held in the case of L.M.L. Ltd. v. CCE, Kanpur - 1997 (94) E.L.T. 273 (S.C.) that off cuts

are of different shapes and sizes and they would clearly fall under the Tariff Entry 72.10.

Following the ratio of Supreme Court's case, we hold that slitter edges and side trim will be classifiable as shapes of iron and steel and will be classifiable under the appropriate heading of the Tariff.