Paxwell Printers Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Feb-10-2000

Reported in : (2000)(93)LC340Tri(Bang.)alore

Judge : S Peeran, A T V.K.

Appellant : Paxwell Printers

Respondent : Cce

Judgement :
1. These stay applications and appeals are taken up together for disposal as the issue is common. The Miscellaneous application seeks for disposal of the appeal along with the stay application as the matter has been finally decided pertaining to classification of the product in question and as such the demand does not survive as held in a batch of 21 appeals which includes the appellant's appeal also which has been disposed of along with stay order No. 1741/99 and Final Order No. 3008-3028/99 dated 25.11.1999.

2. The appellants are manufacturers of printed gay wrappers and they were clearing the same seeking classification under Sub Heading 4901.90 at nil rate of duty. However, proceedings were initiated seeking for classification of the said product under Sub Heading 4823.19 and seeking raising of demands. In the Appeal No. 1703/99 the period involved is 1.3.1994 to 28.2.1996 for which the duty demand of Rs. 51,53,654/- has been confirmed along with penalty of like sum under Section 11AC besides interest at 20% and personal penalty of Rs.

10,00,000/- under 173Q(1) of CE Rules, while in Appeal No. E/337/99 the Commissioner of Central Excise, Bangalore has confirmed in the Order-in-Appeal No. 807/98-CE dated 20.10.1999 (which arises from Order-in-Original No. 80/98 dated 30.3.1998 passed by Assistant Commissioner of Central Excise, Bangalore-I division) confirming duty demand of Rs. 17,33,927/- for the period January, 1997 to May, 1997.

3. The Ld. Advocate Shri S. Raghu submits that a batch of 21 appeals pertaining to the same issue of classification of the product was taken up along with the appellant's appeal in the case of Sri Kumar Agencies and Ors. v. CCE and by final order No. 3008-3028 dated 25.11.1999 the aspect pertaining to classification of the impugned goods was gone into in the light of several judgements cited and the Tribunal held that in terms of the Chapter Notes and Section Notes the product would be rightly classifiable under Sub Heading 4901.90 carrying nil rate of duty and as a consequence the demand does not survive. He produces a copy of the Tribunal's order for perusal.

4. Heard Ld. D.R. Shri S. Kannan, who on a perusal of the order, submits that although the issue has been settled by the Tribunal, yet the Revenue has not accepted the order and the matter is being agitated before the Apex Court. He, therefore, reiterates the various taken up by the Revenue in the impugned orders and seeks for confirmation of the demands in the light of the discussions of the Commissioner (Appeals) and Commissioner of Central Excise, Bangalore in their independent orders confirming the demands.

5. On a careful consideration of the submission, we notice that the aspect pertaining to classification of the impugned order was considered in the appellant's own appeal and the Tribunal upheld the party's contention for classification of the product under 4901.90, therefore prayer for waiver of pre deposit and stay of its recovery is allowed by allowing the stay application.

6. As the issue has already been decided fully in party's favour in the order cited, we therefore take up the appeals for disposal in terms of the said Judgment deciding the issue. In the final order cited in para 9 and 10, the conclusion pertaining to the classification has been arrived which is noted herein below: 9. We

have carefully considered these submissions and have also inspected the samples of the products placed before us in the Court.

On a perusal of the samples, the representative character of which we have no doubt to dispute, we notice that the pictures, motifs, and legends printed thereon clearly go to establish connection with the nature and brand of goods which could be contained inside, thereby providing the customer or buyer specific information on this count which would enable him to exercise his choice correctly. In view of this, printing on this media are not merely incidental to its primary use but in fact are clearly showing the nature of the goods contained therein. Therefore in all these cases, in view of the Section Note 2 to Section VII (for PVC printed films/sheets) and Note 11 to chapter 48 (for the other two products noted above), the products would be rightly classifiable under sub-heading 4901.90, as product of the printing industry. This finding is arrived at after also taking into consideration the ratio of all the decisions noted above, wherein a similar interpretation has been given to these Section Note and Chapter Note with respect to the nature of these products i.e. the nature of the printing done on this media.

10. In view of the aforesaid findings, we set aside all the orders impugned in these appeals and allow the appeals, with consequential relief, if any, as per law.

7. On a perusal of the issue in this case and the findings arrived at in the appellants' own case in para 9 and 10 as extracted above, we notice that the above findings would clearly apply to the facts of the present case also and respectfully applying the ratio thereof, the impugned orders are set aside and appeals allowed.