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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-24-2000

Reported in : (2000)(118)ELT69TriDel

Appellant : Smit Enterprises

Respondent : Collector of Central Excise

Judgement :

1. This appeal has come before us in a larger Bench of five Members, on a reference. The Bench, which referred the matter, doubted the correctness of the decision given by a Bench of this Tribunal consisting of three Members in G.T.C. Industries Ltd. v. Collector of Central Excise, Bombay, 1995 (78) E.L.T. 779. In the reference order, the South Zonal Bench consisting of two Members observed : "The wrapper or the wrapping paper is understood in the trade as paper. Therefore, in our view, the correct classification of the wrapper in question would be as paper and for that reason, therefore, the same would be classifiable under 4823.19 as held by the learned lower authority. Inasmuch as we find a view has been taken by the Delhi Bench of the Tribunal that by reason of printing the same is to be treated as an article of paper for the reason that some characteristics and sales appeals has been added to it by printing we are of the view that the matter will have to be resolved by hearing by a Larger Bench of the Tribunal." 2. The short facts necessary for understanding the dispute in this case are as follows.

3. Appellant manufactures printed cartons, paper wrappers, letter pads, etc. They claimed classification of the printed paper wrapper under sub-heading 4823.90.

They were paying duty as per that classification when the goods were cleared. A show cause notice was issued stating that the correct classification is under Tariff Heading 4823.19 and why it should not be modified and approved accordingly. Appellant disputed the proposed action taken by the department. They stated that entry 4823.19 and entry 4823.90 are residuary entries and when there is a possibility of classification under two entries, the last entry should be adopted. Without accepting this contention, Assistant Collector passed an order stating that the goods are assessable under sub-heading 4823.19, but are entitled to the benefit of exemption Notification No.49/87. Aggrieved by the decision of the adjudicating authority, appeal was taken contending that printed paper wrapper is an article of paper and that the same would merit classification under residuary sub-heading 4823.90. The contention raised by the appellant was that printed wrappers are made by cutting paper to the required size or shape and that the wrapper is an article of paper. By Order-in-Appeal No. 283/91(C) dated 27-8-1991, appeal happened to be dismissed. That is how the matter has come before this Tribunal at the instance of the manufacturer.

4. As per the notification under the Tariff Act, which was in force during 1987-88, entry 48.17 was : "Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape." This main heading was sub-divided into five sub-headings. First sub-heading 4817.10 related to gummed or adhesive paper in strips or rolls. The second sub-heading 4817.20 related to cards, not punched, for punch card machines, whether or not in strips. The third sub-heading 4817.30 related to braille paper and the fourth sub-heading 4817.40 related to blotting paper. The fifth residuary sub-heading was 4817.90 which dealt with other articles. Tariff heading 48.18 during the said period 1987-88 related to : "Other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres." This Tariff heading had six sub-headings. Third sub-heading 4818.13 was in relation to other printed cartons, boxes and cases. Fourth sub-heading 4818.19 was residuary titled "other". Fifth sub-heading, namely, 4818.20 was of toilet tissues, handkerchiefs and cleansing tissues of paper. Thereafter, came the residuary sixth sub-heading 4818.90 titled as "other". During the relevant period with which we are concerned in this appeal, namely, 1989-90, the Tariff entry was 48.23.

While indicating this Tariff entry, the previous entries, namely, 48.17 and 48.18 were clubbed. The Tariff entry with which we are to deal with, namely, 48.23 reads : "Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres." The first part of this entry, namely, "other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape" has got five sub-headings. The first sub-heading 4823.11 related to gum or adhesive paper in strips or rolls. Second sub-heading 4823.12 was in relation to cards, not punched, for punchard machines, whether or not in strips. The third sub-heading 4823.13 was of braille paper and the fourth sub-heading 4823.14 related to blotting paper. Fifth sub-heading 4823.19 was relating to the residue "other". The main Tariff entry 48.23 had yet another sub-heading 4823.90 relating to other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres. The question that arises for consideration by us is whether the product manufactured by the appellant falls under sub-heading 4823.19 or 4823.90.In G.T.C. Industries Ltd. v. Collector of Central Excise, Bombay, 1995 (78) E.L.T. 779, a Bench of three Members of this Tribunal considered the question of classification of wrappers. Question was whether they are to be classified as printed label under the earlier Tariff entry 4818.90 or whether under 4817.90. The wrappers there were "Panama" brand cigarette packets. From the packet of cigarettes it was seen that twenty cigarettes have been wrapped in the aluminium foil and over this the printed paper surrounding it on all sides and closed on all sides with a seal was fixed. Therefore, it was contended that it cannot be considered as a mere label and it performs the function of a printed container. Hence, it was contended that the classification should be under sub-heading 4818.13. This Tribunal, after considering the various arguments, took the view that the wrapper was classifiable as an article in the nature of converted type of paper used for wrapping and classifiable as such under heading 48.17. In other words, the Tribunal came to the conclusion that it will fall under the then Tariff heading 48.17, namely, other paper, paper-board, cellulose wadding and webs of cellulose fibres, cut to size or shape. That Tariff heading has now been changed to 48.23. The sub-heading relating to the residual items falling under this main heading is 4823.19.

6. Decision of this Tribunal in G.T.C. Industries Ltd. case was taken up in appeal to the Supreme Court in Civil Appeal No. 3151 of 1998 by the Collector of Central Excise, Bombay. Their Lordships of the Supreme Court dismissed that appeal on 23-11-1998 as could be seen from 1999 (107) E.L.T. A65.Rollatainers Ltd. v. Union of India reported in 1994 (72) ELT 793, their Lordships took the view that to a common man in the trade and in common parlance a carton remains a carton, whether it is a plain carton or a printed carton. Their Lordships did not accept the contention that product on which some printing is done is the product of printing industry. The printing industry by itself cannot bring the carton into existence. Unless the cardboard is cut, folded, creased and given the shape of a carton by using paste or gum, the carton would not come into existence in spite of fancy printings done on the cardboard. The fancy printings on such cartons would not make it a product of printing industry. According to their Lordship, a carton should remain the product of the packaging industry. This view has been approved by a Bench of three Judges of the Supreme Court in Collector of Central Excise, Bombay v. Paper Print & Products Co., 1996 (88) E.L.T. 317.

8. In the instant case, the wrapping papers manufactured by the appellant are articles of paper as they are cut to required size and shape and are used for wrapping soap. They, therefore, squarely fall within the main Tariff entry 48.23, i.e., "other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape." Consequently, the departmental authorities were right in ordering its classification as an item falling under sub-heading 4823.19. We do not find any ground to interfere with the said conclusion reached by the departmental authorities. Therefore, it follows that the appeal has no merit. It has only to be dismissed. We do so.

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