Commissioner of Central Excise Vs. Galaxy (Frp) Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-24-2000

Reported in : (2001)(134)ELT142TriDel

Appellant : Commissioner of Central Excise

Respondent : Galaxy (Frp) Pvt. Ltd.

Judgement :

1. Revenue filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals).

2. In the impugned order, the Commissioner (Appeals), after relying upon the decision of the Tribunal in the case of K.W.H. Heliplastics Ltd. v. C.C.E. reported in 1993 (63) E.L.T. 178 held that goods, in question, are classifiable under sub-heading 39.26 of the Central Excise Tariff.

3. Ld. SDR submits that the decision of the Tribunal in the case of K.W.H. Heliplastics Ltd. (supra) is set aside by the Hon'ble Supreme Court in the case of C.C.E. v. K.W.H. Heliplastics Ltd., reported in 1998 (97) E.L.T. 385 (S.C.) and held that plastic tanks and vats be classifiable under Heading 3925.10 of the tariff as buildersware of plastic. He, therefore, submits that appeal be allowed.

4. Ld. Counsel submits that the respondents are manufacturing gas-domes, gutters, trays & baffle plates, which are used in the sewage plants and are not covered by the decision of the Hon'ble Supreme Court as the Hon'ble Supreme

Court directed the classification of plastic tanks and vats which are different from the product, in question and are classifiable as other articles of plastic.

6. The issue involved in this appeal is regarding classification of gas-domes, gutters, trays and baffle plates of plastics manufactured by the respondents. Ld. Commissioner, in the impugned order, classified these items and articles of plastic under sub-heading 39.26 of the tariff after relying upon the decision of the Tribunal in the case of K.W.H. Heliplastics Ltd. (supra). The Hon'ble Supreme Court, on appeal filed by the revenue, set aside the decision of the Tribunal and held that plastic tanks and vats are classifiable under sub-heading 3925.10 of the tariff as buildersware of plastics. The contention of the respondents is that the items, in question in the present case, are not tanks and vats.

7. As the issue of classification in respect of plastic tanks and vats is settled by the Hon'ble Supreme Court by reversing the decision relied upon in the impugned order, therefore, in the interest of justice, we are of the opinion that the classification of the goods, in question in the present case, requires re-examination. Hence the impugned order is set aside and the matter is remanded to the adjudicating authority for de novo adjudication in the light of decision of the Hon'ble Supreme Court. The adjudicating authority will decide this after affording an opportunity of personal hearing to both sides.