

Commissioner of C. Ex. Vs. Jayna Packaging Private Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-10-2000

Reported in : (2000)(122)ELT150Tri(Mum.)bai

Appellant : Commissioner of C. Ex.

Respondent : Jayna Packaging Private Ltd.

Judgement :

1. This appeal by the department questions the finding of the Commissioner (Appeals) that the cartons manufactured by the respondent to this appeal were made out of corrugated paper falling under heading 48.08 of the Tariff and hence entitled to exemption, under notification 59/88. The notification exempts from duty printed cartons, boxes, containers and goods made out of paper or paperboards falling in any of the heading specified in the notification. One of the heading specified is 48.08 which at the relevant time included corrugated paper and paperboards.

2. The contention in the appeal is that the cartons are made out of the board which are classifiable under heading 48.90. While no reason is clearly spelt out in the appeal or in the show cause notice which was issued to the respondent to say why the material would be classifiable under heading 48.90, it is apparent because the cartons were printed.

The grounds of appeal reproduces heading 48.90 and says "it clearly indicated that 'corrugated paperboards' made up of corrugated paper when printed paper

and paperboards are also covered by same heading.

This means, to us, that the board in question falls under heading 48.90 for the reason that it is printed".

3. The advocate for the respondent relies on the decisions of this Tribunal in Collector v. Vijaya Packaging Industries, 1995 (7) RLT 165 which has been followed in Dhruvco Printers (P) Ltd. v. CCE - 1996 (85) E.L.T. 62 and CCE v. Vijay Flexible Containers (P) Ltd. -1996 (87) E.L.T. 744. The ratio of these decision is that what is to be seen in giving effect to the exemption is that the parant material out of which the cartons are made. In CCE v. Vijaya Packaging Industries the Tribunal says "If the material of which these cortons are made fall under heading 48.08 then the classification under 4818.12 would be in order". It appears to us that the reasoning in these decisions not always entirely clearly spelt out is that, unless this material out of which the cartons are made is considered the notification itself would become redundant. It exempts printed cartons. Now, paper or board which is elsewhere classifiable, would travel into heading 4811.90 from the moment it is printed. That seems to be the department's case. As the advocate for the respondent points out that the notification then would only be applicable where the cartons are first manufactured and thereafter subject to printing. Invariably he says the process that is undertaken is the reverse of this. The board which generally consists of one layer of coated paper is first made and then printed. Thereafter the printed board is trimmed, cut into necessary shapes and glued or stapled into a box or carton. Strictly speaking as soon as the board is printed what emerges is a paperboard classifiable under heading 4811.90. Therefore in effect no printed cartons can be made out of any of the sub-headings 48.08, 48.04, etc, which are specified in the notification. The notification therefore would itself become redundant.

4. It appears to us that the emphasis placed by these decisions upon the immediate parent material or parentage in the decisions cited by the advocate of the respondent. They seems to say, in other words, that in applying the notification and to determine whether the cartons are made out of the goods specified in the sub-heading mentioned in the notification what is to be seen is the material which

is taken for making cartons before printing. Following that ratio it will not be possible to deny the benefit of the notification.

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