SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Indian Polyfibres Vs. Cce

Indian Polyfibres Vs. Cce

SooperKanoon Citation : sooperkanoon.com/20037

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-14-2000

Reported in : (2001)(74)ECC603

Judge : R T Lajja, P Bajaj

Appellant : Indian Polyfibres

Respondent : Cce

Judgement :

1. This appeal has been filed by the appellants M/s. Indian Polyfibres Ltd., Barabanki, UP against the impugned order-in-original dated 31.3.2000 passed by the Commissioner vide which he had classified the goods crimped uncut waste under sub-heading 5501.20 of the CETA as polyester tow or staple fibre and also confirmed the duty demands on them as indicated in the order itself besides imposing penalty.

3. The appellants are engaged in the manufacture of polyester staple fibre falling under sub-heading 5501/20 of the CETA. During the manufacture of that product, the waste arose at various stages. They filed classification list under Rule 173-B for the main product under sub-heading 5501.20 and for waste under sub-heading 5503.19 of the CETA. The department, however, drew samples twice of crimped uncut waste and sent the same for test to the Chemical Examiner. On receipt of the Report of the Chemical Examiner dated 20.3.87 the classification list of the appellants was finalised. They were also issued two show cause notices one

dated 21.7.87 which was later on amended on 29.7.87 for payment of duty amount of Rs. 92,45,088.76 and another dated 3.1.89 for payment of Rs. 67,79,179.57. After getting their reply the duty demand was confirmed on them. They challenged that order of the Collector (now Commissioner) before the Tribunal who vide Final Order No. E/33 & 34/94-D dated 21.1.94 set aside the same and remanded the matter to the adjudicating authority for deciding afresh the issue regarding classification of the goods in question and the duty liability of the appellants.

4. After the remand the Commissioner through the impugned order, had confirmed the duty demand of Rs. 14,63,217.81 under show cause notice dated 21.7.87 and of Rs. 33,89,589.79 under show cause notice dated 3.1.89 and also imposed penalty of Rs. 1 lac. He had also ordered realisation of Rs. 1 lac as fine in lieu of confiscation of the goods.

The Commissioner has also held the classification of the goods crimped uncut waste under sub-heading 5501.20 of the CETA as polyester tow or staple fibre depending upon the length being 2 metres or more or less than 2 metres.

7. The learned Counsel for the appellants at the very outset has stated that the impugned order of the Commissioner is liable to be set aside on the simple ground that he had failed to comply with the direction given by the Tribunal vide order dated 21.1.94 while remanding the matter for fresh decision. According to the counsel the Tribunal directed the Commissioner (adjudicating authority) to supply the copy of the Test Report of the Chemical Examiner and other material to the appellants before using the same against them for classifying their goods crimped uncut waste which they cleared as a waste, while the Revenue claimed it to be not waste but polyester tow or staple fibre.

But the Commissioner failed to supply the necessary material to them and had passed the impugned order. Therefore, the impugned order deserves to be set aside and the matter be again sent back to the Commissioner for complying with the directions of the Tribunal given in the earlier remand order referred to above and for passing fresh order thereafter accordingly.

8. The learned SDR, on the other hand, has not been able to refute this contention of the counsel. He has also disputed before us that the Commissioner while passing the impugned order had failed to comply with the direction of the Tribunal given in the earlier remand order. He has no objection to the remand of the case again to the Commissioner.

9. We have gone through the record. The perusal of the file shows that when the earlier duty demand was confirmed on the appellants on their goods crimped uncut waste by treating the same as not waste but as staple fibre classifiable under subheading 5501.20 of the CETA by the Collector (now Commissioner) as adjudicating authority. The appellants challenged that order before the Tribunal. The Tribunal set aside that order on the ground that the appellants contested the correctness of the Report of the Chemical Examiner and Department took some steps for the restest (sic) [re-test] of the samples and there was nothing on the record to suggest if the relevant material was supplied to the appellants before relying on the same. The appellants also obtained opinion from the IIT but the Collector failed to consider the same. The Tribunal directed the Collector to re-decide the issue regarding classification of the goods in question and the duty liability of the appellants in respect thereof, afresh. But the perusal of the impugned order shows that the Commissioner had failed to comply with these directions of the Tribunal and only reproduced the earlier order.

Therefore, the impugned order passed by him cannot be sustained and deserves to be set aside.

10. Accordingly, the impugned order of the Commissioner is set aside.

The matter is sent back to the adjudication authority for fresh decision in accordance with the directions given by the Tribunal in the earlier remand order dated 21.1.94 and to pass fresh order in accordance with law after affording an opportunity of hearing to the appellants.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com