Polyset Plastics Ltd. Vs. Commissioner of Cen. Excise,

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SooperKanoon Citation : sooperkanoon.com/23790

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-14-2001

Reported in : (2000)LC483Tri(Mum.)bai

Appellant : Polyset Plastics Ltd.

Respondent : Commissioner of Cen. Excise,

Judgement :

1. An application has been filed under Section 35F of the Central Excise Act for waiver of payment of duty amounting to Rs.50,46,332.00 and equal amount of penalty.

2. When the matter was heard, since it is found that the matter has been covered by the decision of the Tribunal in the case of Interplas (India) Private Ltd and M/s. Calcutta Springs Ltd. vs. CCE, Calcutta III & II reported in 2001 (75) ECC 553 (Tri), we thought fit to take up the appeal itself for disposal after waiving the deposit and with the consent of both sides.

3. The appellant is engaged in the manufacture of Plastic Insulated Liners, which is used by the Indian Railways i n its railway track construction. These liners are primarily used by the Railways for fastening rails to concrete sleepers. While laying down a railway line, first the sleepers made of wood or concrete are laid; on the sleepers the steel rails ARE PUT. The rails are fastened to the sleepers with the help of fastening joint assembly, which incudes these Liners as one of the component of the joint assembly. When concrete sleepers are used for laying

railway tracks, the rails are fastened to sleepers with specially shaped spring steel clips (Elastic rail clip) whose one end is inserted into malleable cast iron shoulder (permanently casted into sleeper) and other curved end of spring clip rests on rail flange. To hold the rails with sleeper a certain holding force is required which is exerted by spring steel clip, induced by inserting a packing piece of predetermined thickness between rail flange and spring clip. This packing piece is called "Liner". Normally liner is made from steel, but when the two rails of a tract are required to be insulated from one another, for automatic signalling, it is claimed by the appellant, the steel which is a conductive material is replaced by insulating materials viz. Glass Filled Nylon, and the liner made out Glass Filled Nylon are called Plastic Insulated Liner. Thus Liners are primarily used as track construction materials and the same are made either of steel or of Glass Filled Nylon. In this case, we are concerned with Glass Filled Nylon. Show cause notice dated 4.5.99 was issued demanding duty in terms of Note 2(n) of Chapter 39 of the Central Excise Tariff reading as follows: "However, it appears that as per chapter note 2(n) of Chapter 39 of the schedule to Central Excise Tariff Act, 1985, as it stood, t he Articles of section XVI (Machines and Mechanical or Electrical Appliance), were not covered under chapter 39, and further as per H.S.N. note at Page 1406, explaing that Insulators are made of any insulating material including plastic and are used on out -door cable for example electrical traction systems (railway, tram-way,trolley buses etc.); it therefore appears that such plastic liners are used for insulation purposes and therefore these are automatically excluded from the purview of chapter 39 of the schedule to Central Excise Tariff Act, 1985. In view of chapter note 3(n) of chapter 39, as discussed above, as the "Electrical Insulators" of any material are classifiable under chapter sub-heading No.8546.00 of the schedule to Central Excise Tariff Act, 1985 and falls within section XVI of the said schedule and therefore such Plastic insulating liners which have been sold to Indian Railways, to be used as tract insulating material, are correctly classifiable under chapter sub-heading No.8546.00 of the schedule of Central Excise Tariff Act, 1985, as "Electrical Insulators of any material" 4. Duty of Rs.50,46,332 was demanded and penalty of equal amount was also proposed to be imposed. Reply to the show cause notice was filed on 15.12.99 and it was specifically p leaded by the appellants as follows: "It is also submitted that these articles are primarily used as standard track fitting materials for joining rails to the sleepers or for joining one rail to another rail and for proper distribution of load and to keep the rails in position. Thus, the primary function of these articles is not for providing insulation but to join the rails and to keep the rails in the same position. This is evident from the fact that these articles are used even in the construction of the Railway tracks where insulating properties are not required as well as the fact that same articles are also made of the materials, like Iron or Steel, not having any insulating properties.

Further it is submitted that these articles does not function as insulator but merely prevent leakage of the current to keep up low voltage. This is evident from the fact that the testing procedure provided for these articles, inter alia, provides for the testing of the strength of the articles but doe snot provide any test for testing the insulation property of the articles nor any value for electrical current resistance is prescribed for these articles. It is also submitted that the tests prescribed for these articles, inter alia, prescribes the test for the water absorption capacity of these articles and water absorption upto a certain limit is acceptable. In case of the insulators water absorption is not permissible at all. This fact also proves our contention that the articles under consideration are not be considered as insulators." 5. The Adjudicating Authority by the order dated 28.9.2000 rejected the contentions raised the assessee. The Adjudicating Authority referred to chapter note 2(n) and held as follows: "I have gone through the relevant facts and materials and find that the primary use of plastic insulated liners is as a track insulating material. The plastic insulated liners are used in fabrication of "insulated rail joints" to prevent flow of electric current from one railway track section to adjacent section. I further note that as per Chapter Note 2(n) [2(o) now] of chapter 39 of the Schedule to the Central Excise Tariff Act, 1985, the articles of Section XVI i.e. "machines and mechanical or electrical appliances" are not covered under chapter 39. Therefore, the plastic insulated liners which primarily function as electrical insulators are excluded from the pruview of chapter 39. It is noticed that the assessee themselves have admitted at one stage in their written reply dated 15.12.99 that:- "this article does not function as insulator but merely prevent leakage of the current to keep up low voltage." Further, the H.S.N. Explanatory Notes to heading 85.46 at Page No.1406 claries that: " Insulators of this heading are used for the fixing, supporting or guiding of electric current conductors while at the same time insulating them slectrically from each other from each etc...

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....Insulators are used on outdoor cables e.g. in telecommunications, power networks, electrical traction systems (railway, tramway, trolley bus etc.) and also for indoor installations or on certain machines and appliances" (emphasis applied).

It is very clear that the article plastic insulated liner is used for insulation purposes on electrical traction systems and therefore fully covered under chapter heading 85.46 of the Schedule to the Central Excise Tariff Act, 1985. The assessee have misquoted the H.S.N. Explanatory Notes to Heading 85.46 stating that the articles are neither used for fixing, supporting, guiding of electric current conductors nor for use on outdoor cables. It is very clear from the H.S.N. Explanatory Notes on chapter heading 85.46 that insulators used on electrical traction system are dully covered by the said heading."H.M. Bag Manufacturer vs Collector of Central Excise reported in 1997 (94) ELT 3 (S.C.) but relied on the Board's Circular No.189/23/96-CX dated 26.3.96 for confirmation of the duty and penalty. Hence, the present appeal.

7. The Id. advocate for the appellant argues that the purpose of the product before us is only acting as a track fastening. He says that the entire matter has been fully considered by the recent judgement of the Eastern Regional Bench of the Tribunal in the case of M/s.Interplas (India) Private Ltd. and M/s. Calcutta Springs Ltd. vs. CCE, Calcutta-III & II Calcutta 8. Shri Sarkar, the departmental representative adopts the reasoning of the Adjudicating Authority.

9. We have considered the matter. Looking to the facts of the case and the judgement of the Eastern Regional Bench of the Tribunal in the case of Interplas

(India) Private Ltd.(supra) we are of the view that the judgement rendered by the ERB in the said case is squarely applicable to the facts of the case. We, therefore, hold that the product before us viz. Glass Filled Nylon-66 Insulating Liners was fall under Item 3926.90 of the CETA and not under item 8546.00 as claimed the Revenue.

Hence, we set aside the impugned order and allow the appeal. In view thereof, the application for stay also stands disposed of.