

Ceat Ltd. Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-02-2001

Reported in : (2002)(150)ELT1184Tri(Mum.)bai

Appellant : Ceat Ltd.

Respondent : Commissioner of Central Excise,

Judgement :

2. The question for consideration in appeal E/330/00 is the classification of nylon tyre cord fabric that the appellant coats with rubber (by dipping it in a solution of rubber) and thereafter subject to calendaring, and consequent liability to penalty. The order of the Commissioner (Appeals) impugned in this appeal confirmed the classification determined by the Deputy Commissioner of these goods as nylon tyre cord fabric under heading 59.02 of the tariff and the penalty of Rs. 4 crores imposed on the appellant for failing to pay this duty. The appellant claims classification in heading 59.06 as rubberised textile fabric.

3. The ratio of the unreported decision of the Tribunal in Apollo Tyres v. CCE relied to in the later decision in CEAT Ltd. v. CCE 1999 (111) ELT 383 is that these goods are classifiable as rubberised fabric under heading 59.06. No reason is shown as to why the ratio of this decision would not apply. We therefore confirm the classification that the appellant claimed, allow this appeal and set aside the impugned order.

4. The appellant captively consumed these rubberised fabrics in the manufacture of tyres for automobiles. Such fabrics were exempted from excise duty leviable under the Central Excise Tariff Act, 1986 by notification 217/86 up to 18.7.95 and thereafter notification 67/95.

However no exemption was available to duty leviable on them under the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

Such duty was payable on goods classifiable under 59.02 but did not apply to goods under heading 59.06. In the light of the classification that we have now determined, this duty was not payable and penalty imposed on the appellant for not paying this duty is therefore set aside.

5. The counsel for the appellant does not deny the failure to file a classification list. Considering that no duty was payable, the failure to file a classification list becomes relatively insignificant. We therefore think that a sum of Rs. 10,000 on this ground would be reasonable and reduce the penalty to this extent.

6. The other appeal is against the order of the Commissioner imposing penalty. The Deputy Commissioner imposed the penalty on the ground that the appellant did not file a classification list for the rubberised fabric. This was in fact the subject matter of the notice which resulted in the order that lead to appeal E/3360/00 which we have disposed of in the proceeding paragraph. The appellant could not be subjected to penalty twice for the same contravention. We therefore set aside this sort order.

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