Ganesh Computer Forms Pvt. Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-26-2002

Reported in : (2002)(145)ELT633Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Ganesh Computer Forms Pvt. Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The notice dated 3-5-1995 which was issued to the appellant demanded duty on continuous computer stationery that it cleared between July, 1990 and December, 1990 which had not been paid. The basis for the demand was that the stationery was classifiable under Heading 4823.90 of the tariff and the assessee had not filed a classification list or complied with other excise formalities with regard to the goods. The notice alleged wilful suppression of production and clearance by the assessee in order to evade duty. Penalty was also proposed. It is the order of the Commissioner confirming the demand for duty and imposing a penalty on the appellant, which is in appeal before us.

2. The appellant is absent and unrepresented despite notice. We have read the memorandum of appeal and also heard the Departmental Representative.

3. It is the appellant's contention that it did not file any classification list or complied with excise formalities with regard to these goods as it was under the bona fide

belief that they were classifiable under Heading 4820 of the tariff and the goods under that heading were exempted unconditionally from duty, and the law exempted filing of classification list and complying with excise formalities in the case of goods which were exempted from duty. It therefore, contended that the extended period of limitation would not apply. The departmental representative reiterates the reasoning of the Commissioner's order.

4. It appears that the classification of continuous computer stationery was in doubt. It was only by a circular of the Board dated 10-10-1990 that its classification under Heading 4820.90 was made clear. The Trade Notice of the Commissioner of Central Excise, Vadodara dated 6-12-1990 which is based on the Board's circular explained that doubts have been expressed as to whether such stationery was classifiable under Heading 48.20 or 48.23 of the tariff and concludes that it will be classifiable under Heading 4823.90. It is thus perfectly possible for the appellant to have entertained a belief that the stationery was classifiable under Heading 48.20 and thus exempted from duty. In that event, it was not required to file any classification list or otherwise comply with the excise formalities with regard to these goods. Therefore, the basis in the notice for invoking the extended period that the appellant wilfully suppressed furnishing information with regard to the production and clearance of this stationery is not tenable and the extended period will not be available.