

Commissioner of Central Excise, Vs. Polymer Papers Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-06-2002

Reported in : (2002)LC180Tri(Delhi)

Judge : S T G.R., P Bajaj

Appellant : Commissioner of Central Excise,

Respondent : Polymer Papers Ltd.

Judgement :

1. In the impugned order the learned Commissioner (Appeals) held, "I hold that the respondents herein have rightly availed the benefit of exemption provided in the Notification No. 18/95 on 16-3-1995 and 8/96-CE, dated 23-7-96 prior to 1-3-97 and w.e.f. 1-3-97, the same would fall under Chapter sub-heading 4811.39. I thus hold that the order of the Adjudicating Authority is not legal and proper. Hence the same is set aside." 2. The facts of the case in brief are that the respondents herein are engaged in the manufacture of Impregnated Filter Paper, Filter Filament, PVC Compound Glue and Adhesive. The respondent is also availing Modvat credit of duty paid on inputs under Rule 57A of the Central Excise Rules, 1944.

3. During the course of checking of RT-12 returns for the month of October, 1996 it was observed that the respondents herein availed exemption under Notfn. Nos. 18/95 and 8/96. The Department alleged that impregnated filter paper is not classifiable under sub-heading 4811.30 w.e.f. 1-3-97 and is not covered by Notfn. Nos. 18/95, 8/96 and 13/96 as the said filter paper is not manufactured out of base

filter paper which is impregnated with synthetic resin, solvent and other special additives. A show cause notice was accordingly issued asking the respondents herein to explain as to why duty demanded under various show cause notices should not be recovered from them and why penalty should not be imposed. The Deputy Commr. adjudicating the case held that impregnated filter paper was classifiable under Chapter sub-heading 4811.30 up to 28-2-97 and under Chapter sub-heading 4811.31 from 1-3-97 and that concessional rate of duty under Notfn. No. 18/95 or 8/96 as claimed by the respondents was not admissible. The learned Deputy Commissioner confirmed the demand of Rs. 1,43,54,479.92 and imposed a penalty of Rs. 10,00,000/-. When the respondents herein filed an appeal before the learned Commr. (Appeals), he held as indicated above.

4. Arguing the case for Revenue Shri Atul Dikshit, learned SDR submits that the issue involved in this case is fully covered by the decision of this Tribunal in the case of Purolator India Ltd. v. CCE, reported in 1990 (45) E.L.T. 91, wherein it has been held that impregnated filter paper will be classifiable under Chapter Heading 48.18. He submits that this decision of the Tribunal was further followed in the case of CCE, New Delhi v. Polymer Pvt. Ltd. contained in Final Order No. 340/96-C, dated 14-5-96. He further submits that the Id. Commr.

(Appeals) had incorrectly held that the paper in dispute was decorative laminate whereas the paper is actually impregnated filter paper, therefore, is classifiable under Chapter sub-heading 4811.31 after 1-3-97. He submits that according to the chemical examiner's reports dated 17-11-97 and 26-11-97, the paper was impregnated with phenolic resin and therefore, the paper was classifiable under Chapter sub-heading 4811.31 on or after 1-3-97. He, therefore, prays that the appeal may be allowed.

5. Shri K.L. Handa, Id. Consultant arguing the case for the respondents herein submits that chemical examiner's reports were not made available to the respondents; that the case has been decided on the basis of HSN Notes; that HSN was not fully aligned with the Central Excise Tariff then; that penalty was too harsh inasmuch as it was only a question of classification of the goods in which the opinion may be different. Id.

Consultant, therefore, submits that the impugned order may be upheld and the appeal may be rejected.

6. We have heard the rival submissions. We note that the total period of demand is from Nov., 1996 to Feb., 2000. The entire period can be bifurcated into two periods. The first period will be from Nov., 1996 to 28th Feb., 1997 and the second period from 1st March, 1997 to Feb., 2000.

7. The above bifurcation is necessary in view of the fact that w.e.f.

1-3-97 there was re-structuring of Central Excise Tariff to conform with HSN whereas before 1-3-97 the Central Excise Tariff was not fully aligned with the HSN in respect of Chapter 48.

8. We find in so far as the tariff up to 28-2-97 is concerned, there is already a decision of this Tribunal in the case of Purolator India Ltd. v. CCE reported in 1990 (45) E.L.T. 91 in regard to classification of impregnated filter paper. Para 17 of the Tribunal's decision in this case is relevant which is reproduced below for the sake of clarity : "17. Now coming to classification of the subject goods under the Tariff Schedule of 1985, the appellants' claim is for Heading No. 48.17, sub-heading No. 4817.90 - Other paper, paper board, cellulose wadding and webs of cellulose fibres, cut to size or shape.

The department would have the classification under Heading No. 48.18, Sub-heading No. 4818.90 - Other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres.

The explanatory notes under heading No. 48.23 of the 'Harmonized Commodity Description and Coding System (HSN) of the Customs Cooperation Council, Brussels (on which the Schedule of 1985 is broadly patterned) state that in the heading (which is a combination of Heading Nos. 48.17 and 48.18 of the Indian Tariff Schedule of 1985) filter paper, folded or not is included. The notes also say that generally these are in shapes other than rectangular (including square) such as circular filter papers. These notes do not rule out pleated shapes and do not militate against the classification of the goods under Heading No. 48.17, sub-

heading 4817.90 of the Indian Schedule especially when regard is had to the words 'cut to size or shape' (in the main text of Heading No. 48.17 which are unqualified. We have already held that the subject goods are not 'articles of paper' for the purposes of the erstwhile Tariff and no argument has been urged before us to take a different view of the purposes of the Schedule of 1985." We find that during the periods from Nov. 1996 to Feb. 1997 the classification of the product will be governed by the decision of this Tribunal in the above case and the product shall be classifiable under Chapter sub-heading 4817.90 and since this classification number does not figure in the exemption notification, therefore, exemption will not be admissible to the appellants.

9. In so far as the classification of the product on or after 1-3-97 is concerned we shall have to examine various entries for this period. The Department has claimed classification under Chapter sub-heading 4811.31 whereas the Id. Commr. (Appeals) has held that the product shall fall under Chapter sub-heading 4811.39. Chapter sub-headings 4811.31 and 4811.39 are reproduced below : Paper and paperboard coated, im-pregnated or covered with plastic (excluding adhesives) Product consisting of sheets of paper or paperboard, impregnated, coated or covered with plastics (including thermoset resins or mixtures thereof or chemical formulations containing melamine, phenol, urea formal-dehyde with or without curing agents or catalysts compressed to-gether in one or more operations; products commercially known as decorative laminates.

10. The learned Commr. (Appeals) has held the classification of the disputed product under Chapter sub-heading 4811.39 on two grounds. The first ground is that the adjudicating authority has based his finding on HSN Under Chapter sub-heading 4811.31 and on the consideration of the weight of the commodity according to chemical test report which has confirmed 288.1 gram M/GSM). Ld. Commr. (Appeals) has held that HSN does not provide a conclusive support unless the entries thereof are fully aligned with the relevant entries in the Central Excise Tariff and the adjudicating authority has given a wrong interpretation of HSN Chapter sub-heading 4811.31 inasmuch as in HSN sub-heading 4811.31 and sub-heading 4811.39 are grouped together. The second point that the Commr. (Appeals) has found fault with is that for compression it is necessary that there

should be more than one sheet of paper or paperboard and that the product should be commercially known as decorative laminate.

11. We have examined the Chapter sub-heading 4811.31 in HSN Page 678 which reads, - "Paper and paperboard coated, impregnated or covered with plastics (excluding adhesive). 4811.31 - Bleached, weighing more than 150 g/sq. m.

12. The contention of the respondents was that Chapter Heading 48.11 of the CETA, 1985 was not fully aligned with Chapter Heading 48.11 of HSN. Inasmuch as full alignment of Chapter Heading 48.11 of HSN and CETA, 1985 is concerned we note that Chapter Heading 48.11 was restructured in the Budget of 1997, and was fully aligned to CETA, 1985 only some sub-headings are different. CCE, Shillong v. Wood Craft Products Ltd. reported in 1995 (77) E.L.T. 23 in para 18 has held as under: "18. We are of the view that the Tribunal as well as the High Court fell into error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression 'similar laminated wood' in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN where there is no indication in the Indian Tariff of a different intention".

Since Central Excise Tariff is patterned on the HSN, therefore, the HSN Notes shall prevail over any other interpretation being given. Thus the Id. Commissioner (Appeals) went wrong in not following the entries given in the HSN Notes under 4811.31. The Id. Commissioner (Appeals) held that for purpose of classification under Chapter sub-heading 4811.31 the product should be bleached. We note that

the process of manufacture undertaken by the respondents herein may or may not include bleaching the emphasis, in the tariff is on 'covered with'. In the instant, the goods were impregnated with phenolic resin and hence will attract classification under Chapter subheading 4811.31. Further we note that the weight of the paper was found to be more than 150g/sq.m the correct classification of the goods after 1-3-97 will be 4811.31.

The Id. Commissioner (Appeals) has also held that the product is decorative laminate. There is no evidence on record to substantiate this finding of the Id. Commissioner (Appeals) that the product is decorative laminate.

14. We have also perused the Cross-Objection filed by the respondents.

We note that prior to 1-3-97, the issue of classification of impregnated filter paper is squarely covered by the decision of this Tribunal in the case of Purolator India Ltd. Classification after 1-3-97 is covered by the HSN Notes which are binding as held by the Apex Court in the case of Woodcraft Products Ltd. 15. In view of the above impugned order in regard to classification of the product is set aside.

16. The product shall be classified under Chapter sub-heading 4817.90 prior to 1-3-97 and under Chapter sub-heading 4811.31 on or after 1-3-97. During the period Nov., 96 to Feb., 2000 the respondents herein shall not be eligible to benefit of Notifications No. 18/85 & 23/96 (sic). We note in the instant case the Deputy Commissioner who was the Adjudicating Authority imposed a penalty of Rs. 10,00,000/-. Looking to all the facts and circumstances of the case we reduce the penalty to Rs. 3.0 lacs (Rupees three lacs).

17. The appeal filed by Revenue and Cross-Objection filed by M/s.

Polymer Papers Ltd. are disposed of in the above terms.

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