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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-21-2002

Judge : S T Gowri, G Srinivasan

Appellant : Asmaco Industries Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The question for consideration in this appeal is whether process undertaken by the Appellant for making masking tape by slitting of scrape paper will amount to manufacture or not. In the order impugned the Commissioner (Appeals) has confirmed findings of the Deputy Commissioner that such process amounts to manufacture.

2. The appellant is absent despite notice, and his request was for a decision on merits.

3. The appellant marketed masking tape among other products. The masking tape was obtained by slitting of crape paper/masking tape of 750 mm width. The appellant imported crape paper of 750 mm width and slit them into smaller sizes of 12 mm, 18 mm, 24 mm etc. and marketed them as masking tape. By a letter dated 30.06.99 they informed the Assistant Commissioner the process carried out by them, was not a manufacture. The show cause notice dated 29.02.2000 was issued asking the appellant as to why slitting should not be treated as manufactured and demanded duty from the appellant. The Deputy Commissioner

after receiving the reply from the appellant held that the activity amounted to manufacture. In the reply the assessee has claimed the classification of and the chapter sub-heading 48.00 'Nil' rate of duty.

The Deputy Commissioner in paragraphs 9 to 11 has held as follows: "9. I have perused the Chapter Note No. 7 of Chapter No. 48 which reads as under: "Heading No. 4801, 4802, 4804 to 4808, 4810 and 4811 apply only to paper, paperboard, cellulose wadding and webs of cellulose fibre: In other words, to qualify classification under Chapter Heading No. 4811, the paper strip or rolls of a width should be exceeding 15 mm, but as accepted by the assessee, the slit rolls are of 12 mm, 18-24 mm, 36 mm, 48 mm & 72 mm. Therefore, these slit rolls are not qualifying the specification and cannot be classified under Chapter Heading No. 4811 as claimed by the assessee.

10. Further, I have perused the explanatory notes under Chapter Heading No. 4823-Para 'A' which specify that (A) Paper and Paper-board not covered by any of the previous heading of this Chapter Further, in same explanatory note, item No. 1 to 20 has been specified which includes in the heading, out of which one of the item is "Gummed or Adhesive Paper in roll or strips".

11. The disputed product of the assessee is having width of 12 mm, 36 mm, 48 mm, 72 mm which is less than 15 cm. Further, sample of the product was tested and it has been resulted to be "Self Adhesive Paper". Therefore, I am of the opinion that the disputed product merit classification under Chapter Heading No. 4823.90 which is most appropriate as alleged in the show cause notice." The assessee appealed to the Commissioner (Appeals) and that authority confirmed adjudicating order. In the grounds of appeal, it has been emphasised that the goods were considered under chapter 48 and it has been stated under chapter note 10(a) said chapter the slitting in the case of the thermal paper will amount to manufacture. This submitted that in the said chapter 48 adhesive tape have not bee mentioned in the note therefore the activity would not amount to manufacture in respect of the product in question. If one were to go through the chapter notes of 4811 the appellants have cleared the goods when it is imported under chapter heading 4811.20 which reads as under: "48.11 - Paper, paperboard, cellulose

wadding and webs of cellulose fibres, coated, impregnate, covered, surface-coloured, surface-decorated or printed, in rolls or sheets, other than goods of the kind described in heading No. 48.06, 48.09 or 48.10.

- Paper and paperboard coated, impregnated or covered with plastic (excluding adhesives)" It is asserted by the appellant that goods have been cleared under this heading. The department wants to put the final product that is after slitting the imported material under chapter sub-heading 48.23 which reads as under: "48.23 Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper paperboard, cellulose wadding or webs of cellulose fibres." It is nowhere stated in the chapter sub-heading classifying the paper on the basis of the dimension of it namely width of the paper. Note 10(a) of the chapter 48 mentions that process of slitting or cutting shall amount to manufacture in respect of thermal paper. Here admittedly imported material is not thermal paper. The show cause notice does not state that the product is of thermal paper. In the absence of such a claim in the show cause notice the entire action of department treating the activity is wrong.

4. Hence, the impugned orders stand set aside and the appeal stands allowed with consequential relief, if any according to law.

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