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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-27-2003

Reported in : (2003)(155)ELT553Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : thermoforming Industries

Respondent : Commissioner of C. Ex.

Judgement :

1. Shri K.V. Sahasrabudhe, learned Consultant for the appellants states that the main issue in this appeal is classification of plastic grills for Air-conditioners. Initially, the Board issued a Circular No.6/86/CX. 4, dated 25-9-1986 issuing guidelines for classification of various parts and accessories of refrigerator and air-conditioning machinery and appliances. In the said circular, classification for plastic grills was indicated under Chapter 39. Subsequently, another circular was issued in the year 1988 (incorporated in Trade Notice 69/1988, dated 6-5-1988 issued by C.C.E. Bombay-I) advising classification of certain refrigerator parts under Chapter 84. However, this circular did not revise classification for parts of Air-conditioners such as plastic grills. Subsequently, the Board in its Circular No. 121/32/95-CX, dated 2-5-1995 referred to its earlier Circular of 25-9-1986 and advised that plastic grills used in Air-conditioners would be more appropriately classified under Chapter 2. Shri Sahasrabudhe pleads that during the period 25-9-1986 to 2-5-1995, the field officials cannot take a contrary stand and demand duty on plastic grills under Chapter 84 since Board's earlier clarification classifying the

product under Chapter 39 was in force.

3. Shri Sahasrabudhe, also pleads that the demand covers the period April 1989 to March 1992 for which the Show Cause Notice was issued on 24-12-1992 and hence the said demand is hit by time bar. He further pleads that the longer period of limitation cannot be invoked as declarations were filed claiming exemption from licensing control and in the said declarations classification for plastic grills for air-conditioner was indicated under Chapter 39 claiming exemption under Notification No. 53/88 and 175/86.

4. He also points out that in another case, the same Commissionarate had decided classification for identical product under Chapter 39 and that the departmental appeal against the said decision has been rejected by the Tribunal vide C.C.E. Bombay v. Prakash Manufacturing Industries - 2001 (130) E.L.T. 861. In the said order, Tribunal noted that the Respondent did not dispute the claim of the Department regarding classification but took into account their submission that Revenue could not take a stand contrary to the Board's clarification of 1986 relating to classification of plastic grills under Chapter 39. The Tribunal also followed the ratio of C.C.E. Bombay v. Pacific Industries - Order Nos. 1302-1303/1999-B, dated 22-11-1999 rejecting the Revenue claim for classification of steel frame for Air-conditioners under Heading 8415 on the basis of the same Circular of the Board of 1986.

Shri Sahasrabudhe also refers to a similar decision relating to classification of Aluminium grill for Air-conditioners in the case of Airgrill Industries v. C.C.E., Bangalore - 2001 (132) E.L.T. 646, the Department's appeal against which has been dismissed by the Supreme Court after condoning the delay in filing appeal vide 2002 (141) E.L.T.A90 (S.C.).

5. Shri M.H. Sheikh, learned J.D.R. appearing for the Department argues at length that the period of demand is from April 1989 to March 1992 and that the Jurisdictional Superintendent had directed the appellants in his letter dated 25-5-1988 that plastic articles manufactured for Air-conditioners and Refrigerators are to be classified under Chapter 84 and not under Chapter 39 but the appellants instead of complying with the directions of the Superintendent continued to engage

in unnecessary correspondence. He further pleads that extended period of limitation is applicable in view of the Apex Court decision in the case of Mermaid Marine Products Pvt. Ltd. - 1997 (89) E.L.T. 442 (S.C.).

Shri Sheikh also pleads at length that M/s. T.F.I. & M/s. R.P.I. were under the same management and control of Shri Nirmal Choraria and therefore, the clearances of both the companies required to be clubbed and neither can be allowed the small scale exemption.

6. Shri Sheikh further submits that some of the impugned goods were misdeclared by the appellants in their declaration as industrial item whereas they were water cooler parts, top lid, drip receptacle and lid cover for deep freezer. These parts were excisable and classifiable under Heading No. 84.18 as refrigeration parts. He also stated that as far as refrigerator parts are concerned, in 1988 itself Trade Notice 69/1988, dated 6-5-1988 was is sued. Since the Range Superintendent had intimated the appellants under his letter dated 25-5-1988, the question of time bar can not apply and the appellants are liable to pay the duty on these items. He also states that Shri Nirmal Choraria being responsible for the irregularities and being directly concerned for all activities of production and clearance, is liable for penal action under Rule 209A.7. After hearing rival submissions and perusal of case records, we find that as far as plastic grills for Air-conditioners are concerned, the Board had clarified that the same was to be classified under Chapter 39 under its Circular dated 25-9-1985. Subsequently, Circular of 1988 revised the classification for some of the refrigerator parts from Chapter 39 to Chapter 84. Though this circular mentioned plastic grills for Air-conditioners in the subject as well as in Para 2, the same did not find any mention in actual clarification in Para 3. Only on 2-5-1995, the Board issued a subsequent circular revising classification for plastic grills for air-conditioners from Chapter 39 to Chapter 84. The learned Consultant has pointed out that other Benches of the Tribunal have held in the above cited cases of C.C.E. v.Prakash Manufacturing Industries, C.C.E.Pacific Industries and Airgrill Industries v. C.C.E. that in view of Board's clarification of 1986, duty on plastic grills for Air-conditioners cannot be charged under Chapter 84. In the case of Borough Wellcome v. C.C.E. (Order No.C-III/405/2003/WZB, dated 7-3-2003), this Bench has also held for detailed reasons stated therein that demand notices

contrary to Board's clarification, are ab initio bad and hence has quashed the same.

Following these decisions, we are of the opinion that in view of the Board's clarification, demand in respect of plastic grills for Air-conditioners in the instant case is not sustainable under Chapter 84 during the period 25-9-1986 to 2-5-1995.

8. However, as regards the parts of the Refrigerator, which the appellants had declared as industrial items, would merit classification under Heading 8418 in view of the Board's revised clarification contained in Trade Notice No. 69/1988, dated 6-5-1988. We also observe that the Range Superintendent had issued a letter to the appellants on 25-5-1988 stating inter alia that plastic articles manufactured for refrigerator are to be classified under Chapter 84. However, we find that the impugned order has been passed confirming a combined demand of Rs. 13,62,046/- for plastic grills for Air-conditioners and other plastic parts for refrigerators. We, therefore, set aside the impugned order, allow the appeal in respect of plastic grills for Air-conditioners and remand the case to the Adjudicating authority for passing an appropriate order afresh in respect of refrigeration parts after hearing the appellants. Appeal is partly allowed as indicated above.