

Aspen Crew Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-11-2003

Reported in : (2003)(89)ECC206

Judge : S Kang, a T V.K.

Appellant : Aspen Crew

Respondent : Cce

Judgement :

1. Appellants filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals).
2. The brief facts of the case are that the appellants are engaged in the manufacture of caps and bags containing logo/monogram of their customers. A show cause notice was issued to the appellants for classifying the caps under heading 6501.80 of Central Excise Tariff and for bags under heading 6305.39 of Central Excise Tariff and for denying the benefit of Small Scale Exemption Notification on the ground that appellants are not entitled for the benefit of Small Scale Exemption Notification as they were manufacturing and clearing branded goods.
3. The adjudicating authority classified the goods as proposed in the show cause notice and denied the benefit of Small Scale Exemption Notification. The adjudicating authority also ordered the confiscation of the goods which were found

in the factory and gave option to the appellants to redeem the goods on payment of Rs. 75,000 personal penalty of Rs. 1,50,000 was also imposed.

5. The contention of the appellants is that caps manufactured by them are classifiable under heading 6101.00 of Central Excise Tariff and alternatively under heading 6102.00. We find that sub-heading 6101.00 of the Central Excise Tariff covers Clothing accessories including sacks, stockings shawls, scarves, mufflers (sic), mantillas, veils, tics, bow ties, cravats minted or crocheted, etc.

6. Heading 6202.00 of Central Excise Tariff covers. Clothing accessories not knitted or crocheted, including handkerchiefs, shawls etc.

7. The Revenue classified the caps under heading, 6501.80. Heading 6501.00 of the Central Excise Tariff covers the "head gear" and Sub-heading 6501.80 covers other "head gear" and parts thereof. As the head gear is covering, for the head, therefore, the Caps are classifiable under heading 6501.80 of the Central Excise Tariff.

8. The claim of the appellant in respect of bags is also as Clothing accessories classifiable under Chapter heading 61 or 62 of the Central Excise Tariff. We find that the socks and bags are specifically covered under heading 6305.00 of this tariff. Therefore, the bags manufactured by the appellants are classifiable under heading 6305.00 of the Central Excise Tariff.

9. Now, the issue lift in this appeal is whether the appellants are entitled for the benefit of Small Scale Exemption Notification. The claim of the appellant was rejected by the lower authorities on the ground that they were clearing the goods with the brand name of the others. The contention of the appellants is that they were clearing, the goods with the brand name or logo Pepsi, Nike, Sterling Grand, Nestle, Doon School, Narula's, Bharat Shell, Grindlay's Bank, DCM motors, Discovery Channel, DIETCHE Bank Delhi, Gold Club, G.E. power system, Modi Revlon, Godfrey Phillips, Pandit & Co., Medicare, White & Mackay etc. The contention of the appellant is that except "Nike". The other customers are not trading in the caps and bags. They were using, the caps and bags as advertising material only. The appellants lying upon the decision of the Tribunal in the case of

Model Soap Company v. Commissioner of Central Excise, Calcutta-1, 1998 (24) RLT 628 (CEGAT) and the Larger Bench of the Tribunal in the case of Prakash Industries v. C.C.E., Bhubaneswar, 2000 (38) RLT 953 (CEGAT-L.B). The contention of the appellant is that the Larger Bench of the Tribunal after considering, the circular dated 27.10.96 issued by the Central Board of Excise and Customs, allowed the benefit of Small Scale Exemption Notification to the goods which are manufactured with the Brand name/logo of the customers and such branded goods are only used by the customers and are not trader in the market. The Tribunal held that in such a situation, the used brand name is not in the course of trade and it would not amount to use the brand name so as to be denied the benefit of Small Scale Exemption Notification.

10. The appellants conceded that they are not entitled for the benefit of Small Scale Exemption Notification in respect caps and bags cleared with Nike brand/Name as the Nike is trading in such goods. The appellants claim is that in respect for the demand on goods cleared in the name of Nike, benefit of abatement of duty is to be allowed in view of the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Delhi v. Maruti Udyog Ltd., 2002 (80) ECC 249 (SC) : 2002 (141) ELT 3 (SC).

11. We find that appellants are clearing the bags and caps to the customers with their logo/brand name who were not trading in such goods. This fact is not denied by the Revenue. Therefore, in view of the Larger Bench decision of the Tribunal in the case of Prakash Industries v. CCE, Bhubaneswar (Supra), the appellants are entitled for the benefit of Small Scale Exemption Notification in respect of the goods cleared with brand name of the customers who are not trading in such goods.

12. In respect of the goods cleared to Nike with their brand name as appellants conceded that they are not entitled for the benefit of Small Scale Exemption Notification. Therefore, are liable to pay Central Excise duty on such goods. However, abatement of duty element is to be given as per the decision of the Hon'ble Supreme Court in respect of the Maruti Udyog Ltd. (Supra).

13. As the appellants are entitled for the benefit of Small Scale Exemption Notification in respect of most of the goods manufactured by them, the confiscation of the goods found in the factory is set aside and the penalties imposed on the appellants were also set aside. Appeal is disposed of as indicated above.

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