Johnson and Johnson Ltd. Vs. Commissioner of Customs

Johnson and Johnson Ltd. Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/33651

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-02-2004

Reported in : (2004)(92)ECC321

Judge : J Balasundaram, A M Moheb

Appellant : Johnson and Johnson Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The appellants herein imported a consignment of self-adhesive reflective film, classified the goods under Customs Tariff Heading 3919.90 and sought clearance under OGL. The department was of the view that the goods which were reflective film ingrained with metallic pieces, were appropriately classifiable under Customs Tariff Heading 3926.90 and that the import could be allowed only against a special import licence as per the provisions of ITC (HS) Exim Code 39269009.20.

The goods were confiscated, as the appellants could not produce licence for their clearance, with option to redeem the same on payment of a fine of Rs. 75,000/- and a penalty of Rs. 10,000/- was also imposed upon the importers, by the Deputy Commissioner of Customs. The Commissioner (Appeals) having upheld the order of adjudication, the above appeal has come to be preferred to the Tribunal.

2. The appellants have asked for a decision on merits; hence we heard the learned SDR and perused the records.

3. There is no dispute that the goods are self-adhesive film in jumbo rolls. They are reflective films ingrained with metallic pieces responsible for the reflection of light. The goods are to be used for captive consumption in the importer's plant after slitting to required size and shape for making adhesive labels. The CTH 39.19 covers "self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes of plastics, whether or not in rolls", while CTH 3926.90 covers other articles of plastic not elsewhere specified. In other words, Heading 39.26 is a residuary entry. We find that the goods clearly answer the description of goods covered by Pleading 39.19 which covers all varieties of self-adhesive films of plastic. The goods are not articles so as to fall within the residuary entry. It appears from the impugned order that the classification under Heading 39.26 has been upheld on the basis of what the goods would become after being put to use in the appellants' factory that is labels. However, it is well recognized that classification of imported goods must be on the basis of what the goods are when presented for assessment. Applying this test, the imported goods as presented for assessment are clearly plastic films and therefore fall for classification under CTH 3919.90.

The finding of the Commissioner (Appeals) that the goods would not qualify as self-adhesive film within the ambit of Heading 39.19 for the reason that none of the sides are permanently tacky in the form in which it has been imported, is not borne out by any material on record such as test report etc.

4. In the light of the above discussion, we hold that the goods in question are classifiable under Customs Tariff Heading 3919.90 and can be cleared under OGL, set aside the impugned order and allow the appeal.