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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-20-2004

Judge : J Balasundaram, A M Moheb

Appellant : Fitrite Packers

Respondent : Commissioner of Central Excise

Judgement :

1. After hearing both sides on the application for waiver of pre-deposit of duty of Rs. 55,32,538/- we find that it was possible to decide the appeal itself at this stage and hence proceed to do so with the consent of both sides.

2. The Assistant Commissioner confirmed the duty demand on the ground that the goods, namely, printed paper (printed with designs and logos) fall for classification under CETA sub-heading 4811.90 attracting duty @ 15% ad valorem, rejecting the appellant's claim for classification under CETA sub-heading 4901.90 attracting nil rate of duty. The Commissioner (Appeals) directed pre-deposit of Rs. 47 lakhs, in the application filed in terms of Section 35F of the Central Excise Act, 1944 along with the appeal filed before him. The applicant's modification application was dismissed by him and he further went on to discuss partly on the merits of the case and dismissed the appeal filed before him upholding the order of the Assistant Commissioner.

3. On hearing both sides we note that in the case of the same assessees the Tribunal has held that printing on plastic films with logos and designs results in a

product falling for classification under CETA sub-heading 4901.90 chargeable to nil rate of duty. The process adopted by the appellants in this case also is that of printing of designs and logos although on paper instead of plastic film. The Assistant Commissioner has held that the Tribunal's earlier order cited supra is not applicable because it mentions only the classification of printed plastic sheets and does not cover the said products. We are of the view that the Commissioner (Appeals) at least ought to have looked into the plea that the Tribunal's earlier order on printed plastic films is equally applicable in the case of printed paper and his order is mainly on the question of non-compliance with the pre-deposit direction, although he has discussed the plea regarding modvat/cenvat credit and cum-duty price. Under the circumstances we are of the view that order of the lower appellate authority is one which does not consider all the submissions made before him and therefore set it aside and allow the appeal by of remand to the Commissioner (Appeals) for fresh decision on the merits of the demand after extending a reasonable opportunity to the appellants of being heard in their defence. He shall pass fresh orders without insisting on any pre-deposit.