Commissioner of Central Excise Vs. Surya Packaging

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-11-2004

Reported in : (2004)(170)ELT409Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Surya Packaging

Judgement :

1. When the matter was called, the respondents were absent. Heard the departmental representative in the appeal filed by the Revenue and considered the materials.

2. On perusal of the order of the Commissioner impugned, it is found that the Commissioner has come to the following findings : (a) "G.P's also mention that the cut wrappers (vertical) are cleared in rolls and not as individual containers and hence it was a fact known to the department at the relevant time." This finding would indicate that such wrappers etc. were not cut to shape and size and therefore following the Board's Circular No. 42/90, dated 23-10-1990, the classification has to be determined under 4823.90 and not under Heading 4823.19. The appeal on classification is required to be allowed.

(b) As regards the finding of Commissioner on bar of limitation, the matter is remitted back to the original authority to redetermine the issue of limitation after ascertaining the facts on record since from the GP 1 in the paper book the said records as found by the learned Commissioner would not be observed.