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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Oct-15-2004

Judge : S Peeran, J T T.K.

Appellant : Vst Industries Ltd.

Respondent : The Commissioner of Central

Judgement :

1. The appellants who are the manufacture of Cigarettes of various brands use "Printed Gay Wrappers" in the packing of cigarettes packets.

They procured the Printed Gay Wrappers from other suppliers and also got the same from job workers after supplying the plain paper and poly -coated paper to them. On the basis of information gathered by officers of anti evasion, Hyderabad-III, Commissionerate, the department conducted investigation and came to the conclusion that the appellants were manufacturing and clearing Printed Gay Wrappers classifiable under sub-heading No.48.23.90 as other articles of paper without payment of duty and without following the central excise procedures. Therefore three sow cause notices covering the period from 23.4.01 to 12.6.02 were issued to the appellants. The Commissioner in is OIO 22/02 dated 30.08.2002 decided that the appellants are the manufacturers of gay printed wrappers which are classifiable under chapter sub-heading 4823.90. Duty of Rs. 1,29,13,866/- was confirmed under Proviso to Sub-heading 4823.90. Duty of Rs.1,29,13,866/- was confirmed under Proviso to Sub-section 1 of Section 11 A of the Central Excise Act 1944. A penalty of Rs. 1,07,50,285/- was imposed on the appellants under Section 11 AC of the Act. Interest was also demanded under section 11 AB. Penalties under Rule 209 G of the Central Excise Rules 1944 and Rule 26 of the Central Excise Rules 2001 were imposed on the following persons.1. Sri V V H S Vara Prasada Rao, Finance Executive Rs.50,000/- Under Rule 209-A A Penalty of Rs.25,00,000/- was imposed on M/s VST Industries under Rule 173Q of the Central Excise Rule 1944 and Rule 25 of the Central Excise Rules 2001. The appellants have strongly challenged the findings in the above OIO 1) Whether "Printed Gay Wrappers" are classifiable under chapter sub-heading No.4823.90 as held by the Commissioner of under chapter 4901.90 as held by the Commissioner or under chapter 4901.90 as claimed by the appellants.

2) Whether the appellants are the manufacturers of printed gay wrappers.

3) Whether the appellants are liable to penalty under Central Excise Rules/Act.

2. The first question raised above is very decisive in this appeal. In other words, if the classification of the impugned goods is decided, all the other questions can be answered on the basis of the correct classification. The appellants claim classification of the product under chapter 4901 as products of printing Industry. If the appellants' claim is accepted, then the products carry nil rate of duty and no duty can be demanded. The penalties imposed also will not be stained. On the other hand, if the department's position is upheld, the appellants would be liable to pay duty under Chapter heading 48.23 and also will be liable for interest and penalties etc.

3. Smt Shoba L. Chary learned JCDR appeared for the department and Shri R. Sasidharan Sr Advocate and Smt L. Maithili advocate appeared on behalf of the appellants.

4. The departmental representative argued that the impugned products known as gay wrappers are products of packing industry and printing on them is merely incidental. In this connection she relied on the decision of the Hon'ble Supreme Court of India in Rolatainers ltd v.UOI (1994(72) ELT 793 (SC) Further it was contended that the larger bench of the CEGAT in Smt Enterprises v Collector of Central Excise Cochin (2000 (118) ELT 69) has held that wrapping paper cut to

size and shape will be classifiable under sub-heading 4823.19 of the CETA 1985 and not under sub-heading 4823.90. Further reliance was placed on Tribunal's decision in the case of Commissioner of Central excise Mumbai v. New Jack printing Works Pvt Ltd (1997 (93) ELT 78 (T) wherein it was held that printed wrapping papers for wrapping Cadbury chocolates bars shall be classifiable under sub-heading 4818.90 and not as other products of the paper industry.Collector of Central Excise Bombay v. Paper Print and Products Cp (1996(88) ELT 317 SC) held that wrappers obtained by cutting unwaxed printed paper and used for packing are products of packaging industries and not products of the printing industry even though printed.

6. Learned Counsel for the appellants mainly relied on the decision of the CEGAT in the case of Web impressions (India) Pvt Ltd., v. CCE Calcutta (2002 (141) ELT 370 (TRI-KOLKATTA) where in it was held that the same product namely printed gay wrapper is classifiable under sub-heading 4901.90 of the Central Excise Tariff Act as printed product and not under sub-heading 4823.90 as contended by the Revenue. The above decision of the CEGAT was challenged by the Revenue in the supreme Court and the Supreme Court upheld the decision of the CEGAT classifying the goods as products of printing industry. Morover she contended that the appellants are not the manufacturers of the impugned products and if at all there is any manufacture the job workers only should beliable.

7. On a careful consideration of the matter, we find that the classification of gay wrapper has already been decided by the Tribunal in the cases quoted above. The decision of the Tribunal in the Web impressions case is based on another decision of the Tribunal in Paxwell Printers v. CCE Bangalore (2000 (93) ECR 340 (T). Since the decision of the Tribunal has been upheld by the SC for classification in respect of the same product, in the true spirit of judicial discipline, we have to follow the same. Hence, we hold that the impugned product is classifiable under chapter 4901.90. In view of this, it is not necessary to go into all the other issues. When the impugned product is classifiable under Chapter 49.01.90, no duty can be levied and the demand is liable to be set aside. The penalties imposed and interest demanded are also not sustainable. Hence all these appeals are allowed.