

C.C. and C.E. Vs. S. Kumar Synfab Ltd.

C.C. and C.E. Vs. S. Kumar Synfab Ltd.

SooperKanoon Citation : sooperkanoon.com/37350

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-13-2004

Reported in : (2005)(98)ECC755

Judge : A T V.K., P Bajaj

Appellant : C.C. and C.E.

Respondent : S. Kumar Synfab Ltd.

Judgement :

1. In this appeal, filed by the Revenue, the issue involved is whether benefit of Notification No. 53/88-CE (Serial No. 39) is available to M/s. S. Kumar Synfab Ltd.
2. The respondents have requested in their letter dated 1.9.2004 to decide the matter on merit after taking into consideration the grounds of Cross Objection filed by them. We, therefore, heard Shri V. Valte, learned SDR and perused the records.
3. The learned SDR submitted that the respondents manufacture Dobby Designer Cards without registering themselves as manufacturer with the Central Excise Department; that the Commissioner (Appeals), under the impugned Order, has held that doobby cards are manufactured from designed rolls of plastic and paper procured from outside on payment of duty and thus the respondents are eligible to avail of exemption under Notification No. 53/88-CE; that the benefit of this Notification is not available as the condition specified in the notification to the effect that the final product should be made out of the raw-material classifiable

under Heading 39.01 to 39.15 of the Schedule to the Central Excise Act on which appropriate duty has been paid, is not satisfied inasmuch as the doobby cards are manufactured by the respondents out of plastic films /sheets which are not classifiable under any of the headings from 39.01 to 39.15 of the Tariff. He relied upon the decision of the Tribunal in the case of Grasim Industries v.CCE, Indore, 2000 (121) ELT 734 (T) wherein the Tribunal has remanded the matter for the purpose of verification for satisfaction of the Assistant Commissioner as to whether the polyester films out of which doobby cards are manufactured, had discharged the duty liability under Heading 39.01 to 39.15.

4. On the other hand, the respondents contended, in their Cross Objection, that mere punching of doobby cards cannot be treated as process of manufacture as the resultant product is not different but graphically designed doobby cards; that the process of punching/perforation does not amount to manufacture as per the provisions of Section 2(f) of the Central Excise Act as no new product different from the raw-material has emerged on punching. They have, further, contended that punching on doobby cards is done on the requirement specified in case of each manufacturer and the punched doobby cards are not sold in the market nor they are capable of being sold; that the reason is simple as each individual manufacturer as per his requirement punch the doobby cards for specific design for his own use and once doobby cards are punched they are not useful for any other manufacturer; that, thus, punched doobby cards are not marketed.

Finally, they have submitted that NotificationNo.53/88-CE exempts goods falling under Heading 39.26 provided the goods have been made out of goods falling under heading 39.01 to 39.15 on which duty of excise has been paid and no credit of duty has been availed of; that the fact is that the plastic doobby cards are made of polyester films which are made of goods falling under heading 39.01 to 39.15 and as such the benefit of the Notification is available. Reliance has also been placed on the Board's Circular No. 44/90 CX.3 dated 22.8.90.

5. We have considered the submissions of both the sides. The Commissioner (Appeals), in the impugned Order has described the process undertaken by the respondents. It has been mentioned in the impugned Order that the respondents

receive from outside duty-paid designed rolls of plastics and paper. These are subjected to cutting and punching so as to suit their printing machine. These are also punched in a manner so as to get required design. The Commissioner (Appeals), has relied upon the decision of the Tribunal in the case of Grasim Industries (supra) wherein it has been held that the punching of plain plastic doobby cards amounts to manufacture. The Tribunal in that case has relied upon the decision in the case of Shri Dinesh Mills Ltd. v. Collector of Central Excise, 1999 (63) ECC 527 (T): 1999 (105) ELT 308 wherein the arguments of the assessee that the activity of punching does not result in the manufacture of a distinct commercial commodity having new name, character and use has been rejected. We also do not find any reason to differ with the earlier decision of this Tribunal inasmuch as by punching the doobby cards, the new product emerges and by using the same, they get a required design which is not possible to get by simple doobby cards. It has been held by the Supreme Court in the case of Kores India Ltd. v. CCE, Chennai, 2004 (174) ELT 7 (SC) that "the test to determine whether a particular activity amounts to 'manufacture' or not is: Does new and different goods emerge having distinctive name, use and character. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes, 'manufacture' take place and liability to duty is attracted". Applying this test laid down by the Apex Court, we hold that a new commodity commercially known as distinct and a separate commodity having its own character, use and name emerge by punching the doobby cards. Therefore, the process amounts to manufacture. The question of marketability has already been settled by the Tribunal in the case of Hindustan Spinning and Weaving Mills v. Collector, 1998 (104) ELT 650 (T) wherein the Tribunal has held that the punched doobby cards are marketable. The fact that these doobby cards can be used by them only does not mean that these are not marketable.

6. We, therefore, hold that the processes undertaken by the respondents amount to manufacture and the punched doobby cards are capable of being marketed.

7. The benefit of Notification No. 53/88-CE dated 1.3.88, is available to all the goods, other than polyurethane falling under heading 39.26 of the tariff if such

articles are made out of the goods falling under heading 39.01 to 39.15 of the Tariff on which duty of excise leviable thereon has already been paid and such articles are produced out of scrap of plastics. It is not in dispute that the impugned goods are made out of plastic films/sheets, which are not classifiable under heading 39.01 to 39.15. The respondents have claimed the benefit of the said exemption notification on the ground that the plastic film has been made out of material falling under heading 39.01 to 39.15. We do not find any force in these submissions at all. As per the condition of the Notification, the goods are required to be made from the material falling under heading 39.01 to 39.15 which admittedly has not been done. Even their reliance on Board's Circular No. 44/90 CX.3 dated 22.8.90 does not advance their case at all. It has been clarified by the Board in the said circular that so long as the non-interrupted unit can prove that the intermediate goods had been produced out of duty paid material of Heading Nos. 39.01 to 39.15, it would be entitled to the exemption as envisaged in the Notification. No such material has been brought on record by the respondents to prove that intermediate goods had been produced out of duty-paid material of Heading Nos. 39.01 to 39.15. Accordingly, the benefit of Notification No. 53/88-CE is not available to the respondents. We, therefore, allow the appeal filed by the Revenue.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com