Commissioner of Central Excise Vs. R.M. Industries, P.M.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-24-2004

Reported in : (2005)(182)ELT353Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : R.M. Industries, P.M.

Judgement :

1. Revenue has filed this appeal against the order of Commissioner(Appeals), who vide the order impugned after considering that brass eyelets, brass rivet sets, part of rivet i.e. toti buttons and eyelets, buckles etc of M.S. Brass and sets, and Aluminium metal were classifiable under heading 9606 on the following grounds the Id Commissioner appeals also observe that Section 11 AB and Section 11 AC were introduced on 28.9.96 and the appellants company had filed declarations in respect of buttons manufactured by them claiming classification under heading 96.06 wayback in 1992-93 and the facts did not disclose any supression, misdeclaration, collussion, etc as envisaged in terms of Section 11A and Section 11AB and the demand of Central Excise duty confirmed is for the period April 1996 to February 1998. He do not find any penalty liable for the period prior to 28.9.96. He fond that penalty was also imposed on the traders under rule 9(2) and Rule 226 and or Rule 52 A however it has not been brought on records how they were responsible for the acts of the contravention.

2. Revenue contends that the product are not button and are properly classifiable under heading 83.08 which covers claps frames with clasps, buckles buckle claps, hooks, eyes eyelets and the like of base metal of a kind used clothing footwear awnings, hand bags, travel goods or other made up articles; tabular or bifurcated rivets of base metal. Further, as per explanatory note of chapter 9606.00, the buttons covered under that heading cover only such items which are used for articles of Apparell, household etc. It was contended that the buttom in this case are used for leather products ladies purses shoes clothes etc would not fall under 96.06.

3. It is seen That finding of the Commissioner to the effect entity are button having been and different parts of such mechanism are cleared independently they can be considered and they will be functional has buttons has not been challenged, as also there is no material to conclude that the entities in the classification dispute cannot be considered as buttons.

4. After going through the relevant competing headings 83.08 and 96.06 and the head notes for the same under H.S.N and on finding that 96.06 would appropriate heading being later in the numerical order.

5. Therefore order classifying under 96.06 is required to be confirmed.

It is found that the Commissioner (Appeals) relied upon the order of Ajanta Leather Fashions Ltd. v. CC, Calcutta and nothing contrary was shown to us. No merits can be found in the revenue appeal.

6. In view of the findings the order of the Commissioner (Appeals) classifying the entries under 96.06 is confirmed and we find no merits and hence appeal is rejected.