Associated Packaging Indus. and Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-02-2005

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Associated Packaging Indus. and

Respondent : Commissioner of Central Excise

Judgement :

1. The applications for waiver of pre-deposit of duty of Rs. 28,20,479/- and penalty of Rs. 5.00 lakhs by Associated Packaging Industries and duty of Rs. 12,26,082.70 and penalty of Rs. 2.50 lakhs by Moneeto Plasti-Fab Pvt. Ltd. arise out of common order of the Commissioner (Appeals), who has confirmed the demands on the ground that the applicants herein manufacture laminated sheets falling for classification under Chapter sub-heading No. 3920.38 and rejecting the assessees claim for classification as "Coated fabrics" under Chapter sub-heading 3926.90.

2. We have heard both sides. We find that the Commissioner (Appeals) has considered the process of product in dispute that there are two independent layer or surfaces which are bonded together to form lamination unlike only one surface existing on which a layer of another material is applied to form what is called coating and that the product is laminated, and not coated product. The Ld Counsel for the applicants would point out that the product has been correctly classified under sub-heading 3926.90 with benefit of exemption under Notification No.132/86 CE dated 01/03/86. The Ld Counsel for the applicants also points out that the

extrusion coating process is absolutely independent and separate process, which cannot be termed as lamination.

3. The Ld. DR however contends that the Assistant Commissioner has confirmed the classification of the product under sub-heading 3926.90 and also denied the exemption with specific and explicit finding that the assessee was manufacturing the product, which was coated on both sides and coating was also done out of duty paid materials. He therefore prays that the entire amounts adjudged against the assessees may be directed to be deposited.

4. The issue of classification is something on which no prima facie view can be expressed. The applicants have therefore not made out prima facie case for total waiver. Keeping in view the plea of financial hardship raised by the applicants, we direct pre-deposit of Rs. 3.00 lakhs towards duty by M/s Moneeto Plasti-Fab Pvt. Ld and Rs. 5.00 lakhs towards duty by M/s Associated Packaging Industries within a period of 8 weeks from the date of this order. On compliance with this direction, pre-deposit of balance duty and penalty will stand waived and recovery thereof stayed pending appeals. Failure to comply with this direction will result in vacation of stay and dismissal of appeals without prior notice. The compliance has to be reported on 15/04/2005.