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Dalmia Laminators Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-16-1987

Reported in : (1987)(14)ECC530

Appellant : Dalmia Laminators

Respondent : Collector of Central Excise

Judgement :

1. Notice dated 7-6-1979 was issued by the Assistant Collector of Central Excise, Calcutta-XII Division to the appellants M/s. Dalmia Laminators that they had been since 1-3-1975 manufacturing and removing laminated jute bags classifiable under Item 68 CET without taking out a licence therefor and without payment of central excise duty and that they had been doing so with intention to evade payment of the said duty. The appellants claimed that the subject goods were classifiable under Item 22A CET and that the demand under notice was not justifiable. The Assistant Collector rejected the said defence and held that the company was liable to pay duty under Item 68 CET for the period 1-3-1975 to 5-6-1979. The reference to 5-6-1979 was for the reason that under Notification 204/79-CE dated 6-6-1979 laminated jute bags had been exempted from payment of duty under Item 68 CET. The appeal against the said order was dismissed by the Appellate Collector under his order dated 25-6-1982. This appeal is against the said order.

2. We have heard Shri N. Mookherjee, Advocate for the appellants and Smt. Saxena, for the Department.

3. Shri Mookherjee conceded that there are several decisions of this Tribunal on this issue whether the laminated jute bags during the period inissuefell under Item 22ACET or68 CET and that the said decisions are against the appellants but claimed that in his submission the decisions were not correct. The said decisions are : These decisions have followed the decisions of the Calcutta High Court in the case of Dalhousie Jute Company Ltd. The judgment of the single judge is reported in AIR 1970 Calcutta 497. The judgment of the divisior bench on appeal, affirming the judgment of the single judge, is dated 14-8-1985 in appeal No. 515 of 1971 but the same does not appear to have been reported. Shri Mookherjee has filed before us a copy of the said judgment dated 14-8-1975 of the division bench. The Calcutta High Court had held that the laminated jute bags were new goods different from the jute fabric and the laminated jute fabric but the laminated jute bags would not fall under Item 22A CET. It is for that reason that they had held that these new goods (laminated jute bags) would not be liable for duty as they did not fall under any of the items enumerated in the first schedule of the CET.4. The Tribunal in its decisions cited earlier took note of, and followed, the said decisions of the Calcutta High Court, in the absence of any other judgment of any High Court to the contrary on the question of classification of the subject goods. The Tribunal observed that after 1-3-1975 the position will be different since the goods would thereafter fall under Item 68 CET as goods not elsewhere specified in the CET. It is for this reason that the Tribunal held that after 1-3-1975 the goods were classifiable under Item 68 CET and became liable for duty till 5-6-1979 when they became exempt under Notification No. 204/79-C.E., dated 6-6-1979.

5. Shri Mookherjee submits that the said decisions were not correct since they did not take note of the amendments totheentry22Ain 1972 and again in 1977.

6. In 1972, Item No. 22 A was amended whereby the coverage of the item was defined in a more specific manner than what was the case prior to the amendment. The effect of the 1972 amendment was that jute manufactures of the following descriptions were excluded from the scope of the entry : (b)containingnowoolorlessthan40% of wool and less than 50% by weight of jute Bimlipatam Jute or Mesta fibre).

In 1977, entry Item No. 22 A was again amended, the effect of the amendment being that jute manufactures all sorts, not elsewhere specified, in which jute (including Bimlipatam Jute or Mesta fibre) predominates in weight were specified to fall under that item.

7. The other change brought about in1977 was that Explanation II under Item No.19 was made applicable to Item No. 22 A. This explanation provides for determination of the classification of cotton fabrics in which 2 or more of the fibres specified in the Explanation are equal in weight.

8. Reading all these changes together, it is reasonable to infer that the expression "Jute manufactures" is designed to cover, apart from manufactures wholly comprising jute fibres or yarn, also manufactures comprised not merely of jute fibre or yarn but also of other fibres or yarn. This view is rein forced by the nature of exclusions as in 1972 and there ference toExplanation 11 ItemNo.19 in the1977 changes. In this view of the matter, the predominance in weight is with reference to the relative percentages by weight of the different fibres/yarns comprising a given manufacture and if jute predominates, then the manufacturer would fall under Item No.22A.Theitem would not appear to cover a manufacture which comprises jute manufacture as defined in Item No.22 A and any other article not falling under Item No. 22A such as in the present case involving laminated jute bags or articles made out of hession fabric and a plastic film or sheet laminated with the fabric.

Such a composite product would not fall under Item No.22Asince it would no longer be a mere jute manufacture. We are unable to accept the contention that the earlier judgments were wrong for the reason that the amendments had not been taken into consideration.

9. Following the earlier decisions, we hold that the order of the Appellate Collector was correct. The appeal is accordingly dismissed.

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