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Commissioner of Customs Vs. Khatima Fibres Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-06-2005

Reported in : (2006)(194)ELT225TriDel

Judge : R Abichandani, M T K.C.

Appellant : Commissioner of Customs

Respondent : Khatima Fibres Ltd.

Judgement :

1. These 11 appeals are filed by the Commissioner of Central Excise, Meerut-II against the Order-in-Appeal No. 76-82/CUS/M-II/2004 dated 26-4-2004 and Order-in-Appeal No. 162-165-CUS/M-II/2004 dated 30-7-2004.

2. M/s. Khatima Fibres Ltd. filed various Bills of Entry during the period from 4-11-2003 onwards for clearance of waste paper of assorted cup stock, unprinted cup stock, steel mill kraft without oil, milk carton cutting with foil etc., classifying the goods under sub-heading 4707.90 of the Customs Tariff Act 1975 and claiming exemption under Notification No. 21/2002 dated 1-3-2002. The goods were imported in containers at ICD, Moradabad. The Customs Officers on physical examination found that the goods were in the form of rolls of paper and were properly classifiable under Heading 4810.00. Accordingly, assessment order was passed by the Assistant Commissioner of Customs, ICD, Moradabad and the goods were assessed to duty under sub-heading 4810.00 denying the benefit of Notification No. 21/2002 to the respondents and rejecting their claim of

classification under sub-heading 4707.90.

3. M/s. Khatima Fibres Ltd. (respondents before us) filed appeals against the assessment orders passed by the Assistant Commissioner of Customs before the Commissioner (Appeals), Meerut II and the Commissioner (Appeals) allowed all the appeals holding that the products in dispute are classifiable under sub-heading 4707.90 and are eligible for benefit of Notification No. 21/2002 dated 1-3-2002.

4. Aggrieved by the order of the Commissioner (Appeals), the Revenue has filed these appeals before us on the ground that the examining officer found that the impugned goods were in the form of rolls of white sheets, rolls of brown paper (printed and imprinted) with one side silver coated sheets, rightly classifiable under Heading 4810.00.

In their appeals, the Revenue has taken a ground that the assessment is done on the basis of the examination of the goods by the Customs. HSN Notes on waste and scrap clearly states that waste of paper and paper board covered by the Heading 4707 includes shaving, cutting, clipping, torn sheets, old news paper and journal, proof sheets, printer rejects and similar material. The heading also covers scrap articles of paper and paperboard. Such waste and scrap is normally used for pulping and is often presented in compressed bales. The goods imported by M/s.

Khatima Fibres Ltd. are not in the form of shaving, cutting, clipping torn sheets, old news paper and journal proof sheets, printer rejects instead these were rolls of different variety of paper.

5. Shri Vikas Kumar, learned SDR appearing for the Revenue pleaded that the Commissioner (Appeals) has relied on the opinion of Dr. R.K. Jain, Scientist and Officer-in charge of Central Pulp and Paper Research Institute, Base office, New Delhi in holding that the goods in dispute are waste paper. He stated that this opinion is undate and it was not before the original authority on 17-12-2003 when the assessment order was passed by the original authority. The assessment orders in respect of seven Bills of Entry were passed between 17-12-2003 to 19-12-2003 and Dr. R.K. Jain had stated in his inspection report that he visited ICD, Moradabad on 20-12-2003 to inspect the consignment of imported waste paper to

provide information on the classification of the consignment under Customs and Excise Nomenclature. He states that the reliance placed by the Commissioner (Appeals) is not correct. He also states that this inspection was done by Dr. Jain before the Assistant Commissioner of Customs, ICD, Moradabad are mentioned in the report itself. However, if the Assistant Commissioner has already passed the assessment order before 20-12-2003, the question of his being present for inspection of the goods by Dr. R.K. Jain does not appear to be correct. This report has not been dealt with in the order-in-original.

Shri Vikas Kumar also drew our attention towards the findings of the Commissioner (Appeals) in order-in-appeal No. 162 to 165-CUS dated 30-7-2004 wherein in sub-para 2 of para 4, the Commissioner (Appeals) has observed that the departmental officer present stated that the goods came in the form of rolls and as' per the examination report, the same was classifiable under Chapter Heading 4810.... He further added that trade opinion was sought in the case, which was given by one M/s.

Paper Pack Agency, Moradabad, who had stated that the rolls were the finished products and the same has been recorded in the Bill of Entry also. He provided copies of both the letters from M/s. Paper Pack Agency, Moradabad and the Bill of Entry in original.

He further pleaded that in the order-in-appeal No. 162 to 165-CUS dated 30-7-2004, the Commissioner (Appeals) has also relied on the opinion of Dr. Keswasni of Chemprojects Consulting (P) Ltd., New Delhi dated December 2003. He states that this opinion of Dr. R.K. Jain and Dr.

Keswani were not before the original authority and, therefore, the Commissioner (Appeals) was not correct in relying on these opinions. He finally pleaded that the goods were correctly classifiable under heading 4810.00 and there was no need to classify these goods under different sub-headings of this heading as the rate of duty were the same for all the sub-headings.

6. Shri Manish Garg, learned Advocate appearing for the respondents pleaded that the goods imported by them were waste paper and in their Bills of Entry as

well as their packing lists, they have shown the details of the goods which describes these goods as waste paper imprinted cup stock, poly coated cup stock, steel mill kraft with or without oil, kraft carrier board foil, pepsi cutting, etc. He states that these papers were waste paper arisen during the manufacture of the printed milk carton, cup stock or steel mill kraft with or without oil, etc. Since these goods were rejected as waste during the manufacture in USA due to strict standards of that country, these goods were sold as waste paper. They are using these papers for recycling and making pulp for manufacture of the paper at their factory. They have also produced the certificate of utilisation of this waste paper in the manufacture of the pulp and further manufacture of paper at their factory.

Therefore, these waste papers were used for manufacture of paper and paper board and these were correctly classifiable by them under sub heading 4707.90 and they were eligible for exemption under Notification 21/2002 dated 1-3-2002. He also relied on the opinion given by Dr. R.K.Jain on 20-12-2003 during his visit to ICD, Moradabad and also the opinion of Dr. Keswani which was produced before the Commissioner (Appeals).

7. We have considered the submissions made by both the sides. We find that for classification of the goods under heading 4707.90 as waste paper, these should be shaving, cuttings, clippings, torn sheets, old newspapers and journals, proof-sheets, printers rejects and similar material and scrap articles of paper and paperboard. We find that the goods imported by the respondents are described as waste paper of assorted cup stock, steel mill kraft without oil, milk carton cuttings with foil, etc., according to the respondents, this waste as generated by the manufacturer of the cup stock and milk carton, etc., since these papers were rejected during the manufacture by the manufacturer of rolls of cup stock, milk carton, steel mill kraft, etc., these were rejected papers and these are treated as waste and accordingly they have declared in their Bills of Entry the correct description as given in the invoices and packing lists. We find that the Commissioner (Appeals) has given a finding that the Department's case is that these products were imported in rolls, they are to be classified under heading 4810.00. However, no reasons or grounds were given by the department for classifying the product under heading 4810.00. The department has also not

further classified these products under the various sub-headings of the heading 4810.00. The order-in-original talks about the drawal of samples. That it seems that the same has not been sent for any test to determine if the product imported satisfied the condition for classifying the goods under heading 4810.00. We find that the Commissioner (Appeals) has also given a finding that the appellant (respondent in the present case) produced an inspection report dated nil from Dr. R.K. Jain, Scientist and Officer in the Central Pulp and Paper Research Institute. The said report says that Dr. Jain visited the ICD, Moradabad on 20-12-2003 and inspected the consignment of imported waste paper contained in various containers.

The said inspection was conducted in the presence of Assistant Commissioner of Customs, ICD, Moradabad. We find that when the Assistant Commissioner had already assessed the goods between 17-12-2003 and 19-12-2003, the question of his going for inspection with Dr. R.K. Jain on 20-12-2003 for the disputed consignment may not be correct. Dr. R.K. Jain has also not given the date when he prepared the report. Since he had gone there after the clearance of the goods from the customs such report cannot be accepted. Similarly report of Dr. Keswani cannot be accepted as it is without any date and this report has no relevance to this case. Now we are left with the description of the goods and the packing list of the goods and the certificate of inspection as given on the Bill of Entry. We find that the departmental officers had drawn samples at the time of inspection of the goods but what they have done with those samples and whether these were sent for any examination is not clear from the order-in-original and the same question was also raised by the Commissioner (Appeals). The departmental representative also could not say anything about these samples as to whether any test was done or not. Since the Department has to assess the goods, they have to come to the correct conclusion by drawing the samples and then classifying the goods. The department has not given any reason why they are classifying the goods under heading 4810.00 and why they are not classifying the goods under the various sub-headings of the same heading. Therefore, we are left only with the declarations as given in the Bill of Entry, the invoices and the packing list. We find that in all these cases, the goods have been described as waste paper. The examination report on the Bill of Entry says that the goods in rolls printed sheets

i.e. Pepsi, Coca-Cola, McDonalds (Bill of Entry No. 907/03 dated 4-11-2003).

Similar noting of the examination are given in another Bill of Entry.

From the examination report, one cannot say that these goods were classifiable under Heading 4810.00. The various requirements for classifying the goods under heading 4810.00 were neither examined nor test reports were obtained. We find that the respondents have produced before the Commissioner (Appeals) the utilisation certificate issued by Superintendent of Central Excise for using these waste papers for converting these into pulp and then making the paper. This clearly shows that the goods imported were utilised for converting it into pulp and then making paper. The respondents from the import documents and from the end-use certificate issued by the Superintendent of Central Excise has been able to establish that these imported goods were waste paper and these were used for converting it into pulp for manufacture of paper. Therefore, the goods were correctly classifiable under heading 4707.90 and were eligible for exemption under Notification No.21/2002 dated 1-3-2002. Therefore, we uphold the order of the Commissioner (Appeals) and reject the appeals of the Revenue.

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