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Beardsell Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-05-2005

Reported in : (2006)(193)ELT325Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Beardsell Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Beardsell Limited (hereinafter referred to as the appellants) are, inter alia, engaged in the manufacture of prefabricated buildings. The present appeal is filed against Order-in-Original dated 31-8-2004 passed by Commissioner of Central Excise, Belapur. A corrigendum dated 3-12-2004 has also been issued by the Commissioner.

2.1 The dispute herein relates to classification of prefabricated buildings cleared in unassembled condition and having essential character of buildings.

2.2 (a) The appellants clear specific dimension 'Isowall Prefabricated Insulated Panels' along with necessary flashings, i.e.

corner angles and channels required at the joints, which assist in assembly at the site of the customer giving rise to a required building. As per appellants, the classification claimed is under Chapter Heading 94.06 of the Central Excise Tariff Act, 1985 which covers 'prefabricated buildings'. As per Note 4 to Chapter 94, 'prefabricated buildings' means buildings which are finished in the factory or put up as elements, cleared together, to be assembled on site, such as housing or work site accommodation, offices, schools, shops, sheds, garages, or similar buildings.

(b) The department find the proper classification as under Chapter Heading 39.25 which is reproduced below.____ Builders' ware of plastics, not elsewhere specified or included.____ 3925.10 - Reservoirs, tanks, vats & similar containers of a capacity exceeding 300 ltrs 3925.20 - Doors, windows & their frames & thresholds for doors 3925.30 - Shutters, blinds (including Venetian blinds) and similar articles and parts thereof (a) The appellants had a technical collaboration with M/s. Isowall Holdings, U.K. world leaders in prefab building technology from 1996 till October, 2002. Beardsell purchased the machine & technology from the aforesaid technical collaborator.

(b) The panel manufacturing machine produces structural panels consisting of polystyrene core laminated between two sheets of metal which is normally stainless steel or galvanized steel or galvanized aluminium or polyester coated galvanized steel/aluminium. Even polyurethane foam or honeycomb can be used as the core material in lieu of polystyrene. The panels possess excellent load bearing capacity. They also have excellent insulation properties.

(c) Panel production is a continuous process. Metal coil, located above and below the laminating press, is drawn successfully through a sheet cut off, a set of ribbing rollers and an adhesive applicator system. They are then drawn into the press and laminated on the core material under the pressure of the electrically driven process rollers, the sheets of core being fed into the press in conjunction with the sheets.

(d) Once laminated in the press, the newly formed panel pass through a set of 4 edge headers, 4 inner mould cutter and 2 side trims before entering the automatic cut off unit.

(e) The machine produces joining profiles. One of profile incorporates a male panel edge and another profile is a roll formed female edge. When such male panel profile is overlapped with female panel profile, the profiles could be joined. Flashing materials, such as channels and corner angles are also prepared in the factory.

They are made of the same metal which is used in the panel. These flashing materials are dispatched with the panels.

(i) Are made with uniform width of 1.18 metres (dimensions of shelters, garages etc. are generally designed with multiples of 1.18 metres as width); and (iii) Are supplied in exact numbers with predetermined dimensions for assembly of them together into walls, ceiling, floors, etc. with the channels (of the same materials as of the panels) supplied along with the panels; and 2.3 (a) Details of correct dimensions of panels, roofing, flashing etc.

required for assembly of buildings at site by the appellants engineers at site determined. Panels are made of the predetermined thickness and length and in numbers in the machine itself. The required roof panels are also made ready in the machine. The doors and windows, wherever required are made ready in the factory workshop. Thereafter panels for roof, walls, doors and windows along with required flashing i.e.

ancillaries such as channels, corner angles are dispatched in the vehicle for assembly at the site. As the panels are in completely knocked down condition, assembly of the panels at the site is very easy. Panels for floor (wherever required) wall, roof, windows, doors and ancillaries such as channels and corner angles are fixed at the site.

(b) The prefab buildings made by the appellants are, inter alia, as under: (a) The appellants have their factory at New Mumbai, Maharashtra and branches at Mumbai, Ahmedabad, Delhi, Coimbatore, Bangalore, Chennai, Cochin, Hyderabad & Visakhapatnam.

(b) The customers requiring buildings such as shelters, cold storage, portable cabins, warehouse etc. approach the branch offices of the appellants. The site engineers of the appellants visit the site and understand the specifications and requirements of the customers. The customer places an order on the appellants specifying the dimension of the building required by them. Thereafter, the engineers of the appellants prepare detailed specifications for the whole building in terms of length, width and height of the structures (such as the walls, roofs, floors, windows, doors and number of panels required therefore etc. The engineers thereafter place dispatch instructions to the factory.

(c) The panels in exact length with predetermined width, thickness & length dimensions for walls, ceilings, etc. along with channels and corner angles are dispatched by the appellants. In other words, the appellants clear panels along with channels and corner angles in exact dimension and exact numbers, so that when they are assembled at the site, a building as desired by the customer would emerge at the site.

(d) No alterations are made to the panels at the site. The engineers of the appellants assemble the panels and channels into required building at the site of the customer.

2.5 Appellants filed classification lists from time to time describing their product as prefabricated building & Isowall Prefabricated structural insulated panels under chapter Heading 94.06. These classification lists are dated 17-9-1996, 1-3-1997, 1-6-1998, 1-3-1999, 1-3-2000 & 1-3-2003. The department has issued various show cause notices, the details of which are as under :- SI. No.SCN dated Period Duty demand 1 3-12-1998 May 1998 to Oct. 1998 9916252 24-3-1999 Nov. 1998 to Feb. 1999 18872633 23-8-1999 March 1999 to July 1999 23370674 15-2-2000 Aug. 1999 to Jan. 2000 25389325 4-1-2001 Feb. 2000 to July 2000 20562426.1 3-9-2001 Aug. 2000 to Feb. 2001 38770646.2 5-9-2001 Aug. 2000 to Feb. 2001 38770647 29-11-2001 Nov. 1996 to April 1998 19638388 1-4-2002 Mar. 2001 to Aug. 2001

26172119 8-10-2002 Sept. 2001 to Feb. 2002 278942010 4-4-2003 Mar. 2002 to Dec. 2002 367144411 6-2-2004 Jan. 2003 to Oct. 2003 4474410____

SUB TOTAL 33081580____

LESS : SCN dtd. 5-9-2001 3877064____

TOTAL 29204516 As per these notices, the panels consist of a core of expanded polystyrene falling under Chapter 39 which is bonded between two layers of metal. As per these notices, panels consist of 98% of expanded Polystyrene and hence insulation property given by expanded Polystyrene gives essential character to the panels. Therefore the same are classifiable under Chapter Heading 39.25 and not under Chapter Heading 94.06. The show cause notice mentioned at SI. No. 7 in the table supra invoked larger period under proviso to Section 11 A.2.6 The appellants contended, that they clear prefabricated building in unassembled condition and are not clearing panels in random and uncertain length. The appellants contended that they clear panels in specific and exact dimensions along with accessories which when assembled at site give rise to the building. Hence, as per HSN, the same is classifiable under Chapter Heading 94.06 only. The appellants also contended that the case of the department that the panels consist of 98% polystyrene is without any basis. The appellants stated that the polystyrene themocole, which is a core material sandwiched between two layers of metal while making the panels consists of 98% air. At no stage, it was mentioned or explained by the appellants that the panels consist of 98% of expanded polystyrene.

2.7 The Commissioner of Central Excise, Belapur passed the impugned Order-in-Original classifying the disputed product under Chapter Heading 39.25 and confirmed the demand of Rs. 2,92,04,516/-. The Order-in-original dropped show cause notice dated 5-9-2001 on the ground that the show cause notice classified the product under Chapter Heading 73.08 which is unsustained. Being aggrieved and dissatisfied by the Order-in-original dated 31-8-2004 read with the corrigendum dated 3-12-2004, the appellants filed this appeal.

3.1 (a)(i) On considering the material it is found & held Notices dated 3-12-1998, 24-3-1998, 23-8-1999, 15-2-2000, made an allegation as the panels consists of 98% of expanded polystyrene hence it appears that the insulated made of expanded polystyrene gives the essential character of the panel as well as the assessee while making the declaration as regards capital goods used for laminating the panels had described the finished products as 'laminated panel' made out by Polystyrene laminated with different material such as five coated steel etc. Therefore it was alleged that polystyrene gave essential character hence classification would be under 39.25.

(ii) Notices dated 4-1-2001, 3-9-2001, 1-4-2002, 8-10-2002, 4-4-2003 and 5-2-2004 allege 98% constitution of polystyrene. As per assessee, & rely on the capital goods declaration to arrive at the essential character to be given by polystyrene to call for classification under 39.25.

(iii) Notices dated 29-11-2001 only blindly allege it appears that polystyrene give essential character & relies on the capital goods declaration to call for classification under 39.25 without any material to support the same.

(iv) Notice dated 5-9-2001 however goes by weight constitution and alleges essential character to be from the 'sheet of steel' to call for classification under 73.08.10 for the period August 2000 to February 2001 for which notice dated 3-9-2001 for the same period alleges the same valued & quantity of goods to be under 39.25.

(b) Commissioner however in the impugned order finds & records as follows - In the SCN dated 5-9-2001 mentioned at sr. no (vi)(b) the goods for the same period proposed to be classified under 73.08 against assessee's claim under 94.06. In this SCN dept. has not brought on record any additional evidences either by way of documents or statements for the proposed classification under 73.08. In this SCN dept. has merely alleged the cost of steel and weight of steel vis-a-vis that of experience polystyrene in the product. I find that the assessee vide their first reply dated 9-1-1999 had informed all these details. Department has not brought on record any evidence for classification of the product under 73.08 overriding proposed classification under 39.25 of the same product for the same period.

This SCN dated 5-9-2001 as mentioned at Sr. No. (vi)(b) cannot therefore sustain, There is however no finding as to how the Commissioner is arriving at the findings of essential characteristic, to be imported by polystyrene filler between the two metal sheets. There is no evidence of the appellants having admitted 98% of the panel to be of Polystyrene or evidence to that effect led by Revenue. The appellants had made a specific plea in the reply to the notices that the allegation of essential characteristics was being deliberately alleged, only to cover the product under 39.25 by application of Rule 3(b) of the Interpretation Rules to the Tariff for Classification. There is no rebutted for this, the panels on basis of value and the end-use, as admitted, in the impugned order to be far (a) Warehouse (b) false ceiling (c) removal of existing interior (d) blaze freezer & cold storage (e) clear room & operation theatre & Industrial & Commercial buildings, would induce a conclusion by that desired document function or the end-use one would be looking for, as a user/customer even if Polystyrene is accepted to supply insulation, as alleged. There is no material in the notice to support the said allegation. Therefore keeping in mind, the diverse uses, other than insulated cold storage, etc. the essential character is to be held to be imported/arising not assuring from polystyrene but the metal/steel coated or stainless steel sheets.

Classification as Builders ware of Plastic under Chapter 39.25 has to be ruled out for the said sheets. Polystyrene consists of 98% of air & would only give bulk in thickness to the panel, without increasing the weight as contended & there is nothing on record to disprove the same. In any case, we would the Plastic contest to be in significant in the product.

(c) The very fact that notice dated 3-9-2001 alleges, for the same period, the clearance of same sheets to be under 39.25 & notice dated 5-9-2001, alleges then to be steel sheets under 73.08 would indicate that even the Commissioners who issued the notices were not clear about the correct classification, under 39.25 when a notice was issued on 3-9-2001, therefore on 5-9-2001 another notice was issued for classification under 73.08. The Adjudicating Commissioner has dismissed this grave uncertainty in the minds of the officers in a casual manner. We find no reasons to uphold the dismissal as arrived or and the classification under 39.25.

(d) The notice dated 29-11-2001 demanding duty for the period No November 96 to April 98 is barred by limitation as we find no case or cause for suppression to have been established. In fact in arriving at a finding as regards SCN dated 5-9-2001 the Commissioner accepts that declaration were correctly made by the appellants vide reply dated 1-9-1999.

(e) Since the essential characteristics of the panels are not emerging or based, on article of Chapter 39 in this case viz.

polystyrene, as also proposed in show cause notice issued on 5-9-2001 & brought out by reasons, were fact of declaring the metal sheets to be laminated with Polystyrene in Modvat declaration that will not call for determining essential characteristics of the panel to be of Plastic falling under Chapter 39. There is no material on record to come to such a conclusion. The classification under Chapter Heading 39.25 following the decision of CCE v. Blue Star Ltd. the (f) Once the classification as arrived by the lower authority is not to be upheld, the duty & penalty demand on to be set aside.

(g) In view of the chapter notes under 9400 as claimed, in the facts of this case is to be upheld for clearances effected as per purchase orders for the structure to be erected at sites.

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