Commissioner of Central Excise Vs. Essem Plastic Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-05-2005

Judge : A Wadhwa, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Essem Plastic Industries

Judgement :

1. The issue involved in the present appeal filed by the Revenue is correct classification of plastic handles manufactured by the respondents on job work basis and to be used by their customers in the manufacture of tooth brushes. Commissioner (Appeals) has set aside the order of the Assistant Commissioner classifying the same under sub-heading 39.26 as articles of plastics by accepting the assessee's claim of classification under Chapter Heading 96.03 as essential part of brush.

2. We have heard Shri R.B. Pardeshi, Id. JDR appearing for the Revenue and have gone through the impugned orders. Nobody represented the respondents.

3. Assistant Commissioner has observed that Heading 96.03 covers brooms, brushes (including brushes constituting parts of machines appliances or vehicles). As such, it is only complete tooth brushes which are covered under Heading 96.03. Inasmuch as the assessee is not manufacturing complete tooth brushes but only plastic handles on which brushes are mounted, the same cannot be held to be falling under Chapter 96. He has also relied upon HSN explanatory notes and

the earlier decision of the Tribunal in support of his above findings. On the other hand, Appellate Authority has observed that 'parts' and 'articles' are two different items. Though all 'parts' are 'articles' but all 'articles' cannot be a 'part'. He has further observed that the word 'article' conveys an idea of a complete goods which carried its in dependent utility function and capable of being bought and sold. As such, he held that plastic handle being a part of brush and not a complete article in itself would be classified as a part of brush under Heading 96.03.

4. We find that the description of goods under Heading 96.03 is brushes. The brushes has two elements i.e. nylon bristles and plastic handle/stick. Neither of the two elements can be individually considered as complete tooth brush unless the part consisting of nylon bristles is joined with the plastic handles. The goods have to be assessed and classified in the shape in which they are cleared from the manufacturer's factory. By no stretch of imagination plastic handle can be considered as tooth brush so as to merit classification under Chapter 96. Commissioner (Appeals) has referred to Chapter Note 2(ii) of Chapter 39 which excludes articles of Chapter 96 from the purview of Chapter 39. As such brushes are excluded but in our view, such exclusion will not apply to plastic handles as they cannot be considered brushes, as already discussed. On the other hand we find that as per Chapter Note l(d)of Chapter 96, parts of general use as defined in Note 2 to Section XV or similar goods of plastic (Chapter 39) are excluded. Inasmuch as plastic handles is a part of brush, the same is excluded from Chapter 96 by virtue of Note l(d) to the said chapter.

5. We also take note of the Assistant Commissioner's reliance on CBEC circular issued under Section 37B vide F. No. 33/9/94-CX, dated 29-7-94 read with Tribunals decision in the case of Hariram Govindram -1997 (94) E.L.T. 574 (T) classifying and holding that the cassette shells for audio, cassette housing/casing, hubs, rollers and stoppers are classifiable under Chapter 39 instead of Chapter 85 and reliance on another 37B order of the Board being No. 29/5/94, dated 9-3-94 opining the classification of plastic caps meant for battery cells under Heading 39.26 and find the same to be appropriate. Reliance by the adjudicating authority on HSN explanatory notes is also appropriate. As per the said notes brooms and brushes of rubber or plastic molded in one piece are covered under Heading 96.03

(P1601) and the brush mountings or handles (classified according to constituent material) are excluded from Heading 96.03 (P 1602). It is, by now, well settled that HSN explanatory notes can be referred to and relied upon for the purpose of understanding the scope of the entries and for deciding upon the correct classification of the product.

6. Tribunal in the case of Jyoti Plastics - has held plastic nuts & bolts as falling under Heading 39.26 and in the case of M/s. Wiltech (India) Ltd. - has classified plastic razor under Heading 3922.90 and not under Chapter 82. The above decision support's the Revenue's view that plastic handle earn their classification under Chapter 39.

7. We also agree with the Revenue's contention or that interpretative Note 3(d) laying down that 'parts' which in themselves constitute an 'article' covered by a heading of the section are in all cases to be classified in their own appropriate headings even if specifically designed to work as part of specific machine. As such, plastic, even though to ultimate form part of tooth brush, would appropriately fall under Heading 39.26.

8. In view of our foregoing discussion, we set aside the order of Commissioner (Appeals) and allow the appeal filed by Revenue by restoring the order of the Assistant Commissioner.