Commissioner of C. Ex. Vs. New Jack Printing Works (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-05-2005

Reported in : (2005)(190)ELT451Tri(Mum.)bai

Judge : A Wadhwa, A M Moheb

Appellant : Commissioner of C. Ex.

Respondent : New Jack Printing Works (P) Ltd.

Judgement :

1. Being aggrieved with the order passed by Commissioner of Central Excise, Mumbai dropping the show cause notice raised against the respondents, Revenue has filed the present appeal. We have heard Shri Vimlesh Kumar ld. SDR appearing for the Revenue and Shri M.H. Patil, ld. Advocate for the respondent.

2. Demand raised in respect of Printed Paper Sheet for the period 1-4-1991 to 31-...-94 by way of issuance of show cause notice on 14-10-1996 on the alleged ground that the said goods were properly classifiable under heading 4811.90 instead of heading 4820.00 has been dropped by the adjudicating authority on the point of limitation by observing that during the relevant period all classification lists filed by the respondents stood duly approved by the proper officer under heading 4820.00. Accordingly by observing as under; he has dropped the demand - "It is not disputed that assessee filed these classification list and the same were approved by the Assistant Commr. C. Ex.

Departmental plea that assessee suppressed the fact by misclassifying the printed sheet in CL/H 4820.00 instead of CL/H 4811.90, is not acceptable. If the deptt. did not agree with the approval of classification list, appeal should have been filed by the deptt. against order of A.C. C.Ex. Approving the said classification list. I do not find any such appeal filed by the deptt. In the case of Shree Ranga Industries, the Supreme Court has dismissed the Civil Appeal No. 2410/93 and upheld the decisions of CEGAT order in which it was held that the extended period of limitations was not invocable where the deptt. was aware of the assessee's activities at all times and where classification fist filed by the assessee claiming partial exemption was unilaterally changed by the Assistant Commissioner to another chapter. In the same manner, the Appellate Tribunal held in Dabur India Ltd. , that extended period of limitation is not invocable when full information furnished by the appellant in the classification list has been approved. The appellant was under bona fide belief based on earlier judgments that the product was classifiable in a particular way. Similarly, in this case also, the classification lists of the assessee were approved by the Asstt.

Commissioner, no new facts emerged in this case regarding activity of manufacturing "Printed Sheet". In view of above discussion, I find that demand for printed sheet for the period Nov. 91 to March 94, is hit by time bar as the show cause notice was issued on 14-10-96 as extended period under proviso to Section 11A(1) of CEA 1944 can not be invoked." 3. After going through the grounds of appeal raised by Revenue, we do not find any justifiable reason to interfere with the above findings of the adjudicating authority. The contention of the Revenue that the appellant should have disclosed detailed process of manufacture does not appeal to us inasmuch as the proper authority, if in doubt, should have called for any further details before granting approval to the classification list. As such, we do not find any infirmity, in view of the adjudicating authority on this ground.

4. In respect of the demand raised on printed paper sheet cut to size with customers design, name, label, etc. adjudicating authority has observed that the same was cleared as wrapper whereas the declaration made by them was printed label sheet. As such, he has concluded that the respondents had cleared wrapper under the guise of printed label and thereby suppressed the fact. However, he has

extended them the benefit of Notification No. 49/87 dated 1-3-1987, which exempts converted type of paper made from duty paid paper. By observing that the process of printing amounts to process of conversion of paper inasmuch as the same has been done out of the duty paid paper, benefit has to be extended to them. On this ground, the demand raised in respect of wrapper has been dropped. The revenue's contention is that the conditions of the notification as regards the base paper out of which converted paper has been reduced being duty paid has not been looked into by the Commissioner and he has not satisfied himself on this. However Shri M.H. Patil submits that apart from the fact that the Commissioner uses the expression 'duty paid paper', in the findings indicating thereby that he was satisfied about duty paid character of the base paper out of which converted paper was manufactured, he also draws our attention to the explanation appearing in the said notification. As per the explanation, for the purposes of the notification, base paper used in the manufacture of converted type of paper shall be deemed to have paid the appropriate duty of excise leviable under the Act. As such, on account of this deeming provision of law, any base paper purchased from the market is deemed to be duty paid unless contrary is shown. The Revenue has not adverted to any evidence on record to show that the base paper was not duty paid. In view of this we do not find any infirmity in the views of the adjudicating authority on this issue also.