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SooperKanoon Citation : sooperkanoon.com/40343

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-22-2005

Judge : A Wadhwa, A M Moheb

Appellant : Cce

Respondent : Caprihans India Ltd.

Judgement :

1. Being aggrieved with the order passed by the Commissioner (Appeals), revenue has filed the present appeal. We have heard Shri Hitesh Shah, Ld. SDR appearing for the revenue and Shri Rohan Shah, Ld. Advocate appearing for the respondents.

2. The dispute in the present appeal relates to the correct classification of the printed PVC sheets. The Assistant Commissioner vide his order has held that the printed PVC sheets are properly classifiable under sub-heading 3920.39 of Central Excise Tariff Act, 1985 and has consequently confirmed the demand of duty of Rs. 50,44,584.50. On appeal against the said order, the Commissioner (Appeals) accepted the assessee's stand on classification of goods under Chapter 49, as product of printing industry. Hence the present appeal.

3. As per facts on record, the assessee is manufacturing plain PVC sheets and are discharging duty liability on the same under Chapter 39.

Thereafter, the goods are issued to their printing section wherein the same are printed with various designs and pictorial representation. The assessee has contended that such printing of plastic film does not amount to manufacture and if at all the same is to be held as manufacture, it would fall under Chapter 49 attracting nil rate of duty.

4. After hearing both sides, we find that the Tribunal, while disposing of the assessee's appeal involving the identical issue has, vide his order No. A/1286/WZB/2005/C-III dated 12.7.2005 has held that printing of sheets would amount to manufacture, inasmuch as a new product having commercial identity of its own emerge. It is also seen that the respondents have also considered, at one point of time that the process undertaken by them amount to manufacture and, as such, a classification under Chapter 49 was filed.

5. We are in agreement with the above decision that the process of printing undertaken on the plain sheets result in emergence of a new identifiable product having different commercial identity inasmuch as plain and printed sheets cannot be held to be same goods and as such, reject the said plea of the assessee.

6. As regards the classification, it is seen that the appellate authority has held the classification under Section 49 by taking into consideration Section Note (2) of Section VII. The said Note (2) is to the following effect:- Except for the goods of heading 39.18 or 39.19, plastics, rubber and articles thereof, printed with motif characters of pictorial representation, which are not merely incidental to the primary use of goods fall under chapter 49.

7. It is seen from the above note that only those printed goods which are not incidental to the primary use, would be excluded from chapter 39. The respondents have produced before us plain as also printed PVC sheets. It is seen that the printing on the plain sheets is only to enhance the beauty of the plain sheet and both the types are being used for the same purpose, i.e. either as table coverings or shower curtain, etc. As such it is clear that the printing on the plain sheet is only incidental and does to convert the plain plastic sheets into something different so as to take it away from the Chapter 39 and make it fall under Chapter 49, as a result of printing industry. It is well settled that Chapter 49 covers product

of printing industry like labels, etc.

which imparts the character to the goods. The Hon'ble Supreme Court in the case of Metagraphs Pvt. Ltd. v. Collector of Central Excise, has, while deciding upon the classification of aluminum labels, has held that printing of the label is not incidental to its use but primary in the sense that it communicate to the customers about the products and thus serve a definite purpose. It is the printing industry which are brought label into existence. They have further observed that the products on which some printing is done are not the products of printing industry and the classification is to be contested with reference to the fact of the each case. Inasmuch as printing in the present case is not of prime importance so as to convey the main use of PVC sheet, it cannot be said that the final product has come into existence on account of the printing having been on the same.

8. We also take note of Chapter note (10) of Chapter 39 which read as follows: In heading Nos. 39.20 and 39.21. the expression "flexible" means, sheets, film, foil and strips applies only to plates, sheets film, foil and strip (other than those of Chapter 54) and to blocks of required geometric shape whether or not printed or otherwise surface work, non cut and cut into rectangle (including square but not further worked). Even if when so cut they become article ready for use.

Even the above chapter note makes it clear that printed sheets would continue to fall under heading 39.20 even when they arc printed with pictorial representation. As such, we are of the view that the order of the original adjudicating authority holding that the goods are properly classifiable under heading 39.20 is correct and the same is accordingly restored.

9. It is also seen that the appellants are clearing printed plastic sheets to the market, in which case the duty is required to be paid on the assessable value of the printed sheets. However, at this stage, Ld.

Advocate submits that they had already paid duty on the plain PVC sheets and they may be allowed the benefit of modvat credit of the same, while discharging duty on the printed sheets. Inasmuch as they duty is being demanded on the printed sheets, we hold that the duty already paid on the plain sheets would be adjustable towards the final duty required to be paid by the respondents, for which purposes we remand the matter to the Assistant Commissioner for doing quantification. The revenue's appeal is thus allowed in above terms.