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Commissioner of Central Excise Vs. Npi Packaging (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-01-2005

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Commissioner of Central Excise

Respondent : Npi Packaging (P) Ltd.

Judgement :

1. A common issue of classification is the subject matter of these appeals. The items are EPS moulded products, EPS sheets and EPS blocks.

These are insulation mouldings for freezer door, insulation drip tray and insulation pan buffle. The items are moulded out of thremocol to specified size and shape. These are placed inside the freezer door, drip tray and pan buffle. They perform the function of insulation.

Revenue authorities contend that the items must be classified under tariff sub-heading 8418 which is for "parts of refrigerators, freezer and other refrigerator or freezer equipment". This contention is based on the fact that the mouldings are made for specific use in refrigerator doors etc. Revenue also contends that even though the items are not ready-to-fit parts of refrigerator, they will merit classification as parts of refrigerators since part of a part is also classified as part.

2. The learned Counsel for the assessee points out that only parts that are identifiable as parts of refrigerator, freezer etc. would find classification under Sub-

heading 8418 as "parts" of these items. It is his submission that items in question are merely insulating materials made to required specifications for use as filler inside refrigerator parts, like refrigerator doors etc. Learned Counsel also points out that such articles retain their identity as insulting articles and would be classifiable based of their material of make, i.e., if they are made out of plastic, they will find classification as articles of plastic under Chapter 39.

3. Reliance is being placed by the parties on the decisions of the Tribunal in the cases of P.R. Packagings Pvt. Ltd. v. C.C.E., Delhi II and Paharpur Cooling Tower the assessee is relying decision in P.R. Packaging Pvt. Ltd. case, Revenue is relying on the decision in Paharpur Cooling Tower case.

4. Tariff sub-heading 8418 is for parts of refrigerator etc. There could be no dispute in the present case that the items in question are not directly usable, identifiable, parts of refrigerator. They are articles which find use in the manufacture of parts (like doors) for refrigerators. Therefore, they cannot find place as "parts" of refrigerator etc. The extended meaning sought to be given by the revenue to the word 'part' also may not be appropriate in the present case, as these are not identifiable parts going into the assembly of other parts. These are materials getting used in the manufacture of refrigerator parts. In these facts, we are of the opinion that items in question do not merit classification under subheading 8418.90 as parts of refrigerator etc. They would appropriately be classifiable under Chapter 39 as articles of the material of which they are made. The case of Paharpur Cooling Tower would not be attracted in the present case.

The issue decided in that appeal was classification of imported Fill Pack assembly for moulded cooling tower.

5. In the result, Appeal No. E/1569/-4-NB(C) of M/s. NPI Packaging (P) Ltd. succeeds and is allowed. Appeal No. E/3349/03-NB(C) of the Revenue fails and is rejected. Appeal No. 1319/04-NB(C) of the Revenue seeks imposition of penalty on the basis that correct classification of the items is under 8418.90. Since we are holding the classification contrary to the one sought by the revenue, penalty is not attracted.

Therefore, that appeal also fails and is rejected. All the appeals are ordered in the above terms.

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