

Ccex Vs. Milton Laminates

Ccex Vs. Milton Laminates

SooperKanoon Citation : sooperkanoon.com/41865

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-20-2006

Reported in : (2006)(106)ECC250

Judge : J Balasundaram, Vice, S T Chittaranjan

Appellant : Ccex

Respondent : Milton Laminates

Judgement :

1. Heard both sides. The respondents manufacture paper based Decorative Laminated Sheets. This appeal filed by the applicant Commissioner relates to the following

	Show	Cause
--	------	-------

Notices:_____

SCN No. Date Period AmountNo.9.

V-48/3-12/D-11A/95 08.5.1995 Nov. 94 to Dec.

94

6,59,280/-

Total 1,20,54,057/- 2. Shri Devan Parikh, learned Advocate for the respondents fairly states that these Notices have been issued demanding differential duty from time to time within the prescribed normal period of limitation and that the classification of the impugned goods has been held to be under Chapter 39 (sub-heading No. 3920.31/3920.37) and not under Chapter 48 (sub-heading No.

4818.90) by the Hon'ble Supreme Court in the case of CCE, Hyderabad v. Bakelite Hylam Ltd. 3. It is the contention of applicant Commissioner that it is wrong on the part of the lower appellate authority to classify the impugned goods under Chapter 48 for the period prior to receipt of the decision of the Hon'ble Supreme Court in the case of Bakelite Hylam (supra).

Shri Vimlesh Kumar, learned SDR appearing for the applicant Commissioner states that in view of the retrospective amendment to the Central Excise Act, 1944 (CEA), the validity of which has been upheld by the Hon'ble Supreme Court, the impugned demands are sustainable even though the classification was earlier wrongly held to be under Chapter CCEX, Bombay v. Caprihans India Ltd. 4. The learned Advocate for the respondents states that the aforementioned 9 Show Cause Notices fall in three categories. In respect of the first two Show Cause Notices in the table above, the classification under Chapter 48 was approved upto the Tribunal level and the department's appeal against the same was dismissed by the Hon'ble Supreme Court on the ground of delay in tiling the appeal. In respect of the Show Cause Notices at Sr. No. 3 to 6 in the table above, the classification under Chapter 48 was approved by the Commissioner (Appeals) and no further appeal was filed by the department. In respect of Show Cause Notices at Sr. No. 7 to 9 in the table above, the classification under Chapter 48 was approved by the Assistant Commissioner. The learned Advocate fairly concedes that the classification lists were approved subject to decisions by the Hon'ble Supreme Court. However, he states that in respect of cases at Sr. No. 1 to 6, since the approval of classification had attained finality at a level higher than the assessing authority, no demand can be raised in respect of periods involved in those Show Cause Notices. In this regard, he cites the decisions in the following cases: Faxtel Systems (India) Pvt. Ltd. v. CC, Cochin 2004 (169) ELT 265 (Tri-LB) Super Cassettes Industries Ltd. v. CC, Kolkata Design Auto Systems Ltd. v. CCE, Indore He states that from the ratio of the decisions cited above, it is clear that where the appellate authorities at various levels have upheld the classification under Chapter 48, no demand can be raised contrary to such classification. He also states that as for the period at Sr. No. 7 to 9 of the table above, the assessments were finalized as per the approved classification list and no appeal by the department has been filed against such approval. According to him, the retrospective amendment to the

law cannot overcome the fact that in these cases no appeals were filed against the approved classification.

5. After considering submissions from both sides and perusal of the case records and cited case laws, we find that the retrospective amendment to Section 11A provides for demand of duty short levied on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods. We reproduce the relevant provisions of Sub-section (1) of Section 11A of CEA below: When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder, a Central Excise Officer may within one year from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

We find that the aforesaid provision specifically addresses a situation where the short-levy is on account of assessments relating to approval etc. of the rate of duty and hence covers short-levy on account of wrong classification.

6. As regards the period relating to Sr. No. 7 to 9 in the table above, we find that the classification was approved by the Assistant Commissioner and the assessment is claimed by the respondents to have been finalized. In our view, the short-levy arising out of such approval and assessment are covered under the retrospectively amended provisions of Section 11A(1) reproduced above. The only rider to confirmation of demand in such a case is that the demands must be raised within the normal period of limitation, which is satisfied in the present case. We also take note of the decision of the Larger Bench of the Hon'ble Supreme Court in the case of ITW Signode (supra), which upholds the validity of the retrospective amendment made to Section 11A.7. As far as the period relating to demand in Sr. No. 1 to 6 in the table above is concerned, the respondents contend that in respect

of the first 2 demands classification under Chapter 48 was approved by the Tribunal and the same has been upheld in appeal by the Hon'ble Supreme Court even though it was by way of rejecting the department's appeal on the ground of delay in filing the appeal. They similarly contend that in respect of Sr. No. 3 to 6, there is an order-in-appeal by the Commissioner (Appeals) approving classification under Chapter 48 and the same has attained finality. The learned Advocate for the respondents also contends that in respect of both the periods (Sr. No.1 to 2 and 3 to 6), the classification has attained finality at the appellate levels and the same cannot be said to be on the basis of 'approval' under Section 11A(1) as approval is only done at the original level by the Assistant/Deputy Commissioner. We have considered these submissions made on behalf of the respondents. We find that Section 11A(1) uses the expression "approval, acceptance or assessment". The words 'approval' and 'acceptance', in our view, would cover not only approval of the classification at the original level but also 'approval, and/or acceptance' at the appellate levels under various provisions of CEA. A narrow interpretation of these expressions would surely defeat the very purpose for which the retrospective amendment has been made. In view of the fact that the retrospective amendment has been held to be valid by the Larger Bench of the Hon'ble Supreme Court, the same needs to be applied to cases of approval and acceptance of classification at higher appellate levels as well and not only at the original level. Accordingly, we are of the view that since the issue of classification on merit has been decided against the appellants in the case of Bakelite Hylam (supra), the short-levy arising out of the wrong classification is recoverable under the retrospectively amended provisions of Section 11A(1) of the CEA.8. We also note the decision in the respondents' own case reported at , in which another Bench of the Tribunal has held that once the classification decided in favour of the appellants by the Tribunal was reversed by the Hon'ble Supreme Court, refund granted on directions of the Hon'ble High Court on the strength of the Tribunal decision is liable to be returned subject to the final decision on classification held in favour of Revenue in the case of Bakelite Hylam (supra). We find that the impugned product is the same and the Tribunal in that case has upheld the demand against the impugned refunds made earlier.

9. Keeping in view the foregoing, we are of the view that the demands in this case, which have been issued within the normal period of limitation are required to be upheld in the light of the decision of the Hon'ble Supreme Court in Bakelite Hylam (supra) and the decision of the Hon'ble Supreme Court in the case of ITW Signode (supra) upholding the retrospective amendment to the provisions of Section 11A(1) of the CEA. Consequently, we set aside the impugned order-in-appeal and restore the order-in-original.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com