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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : May-04-2006

Reported in : (2006)(110)ECC40

Judge : S Peeran, J T T.K.

Appellant : The Commissioner of Central

Respondent : Sign and Display Systems

Judgement :

1. Revenue has filed this appeal in respect of the OIO No. 06/2002 dated 28.02.2002 passed by the Commissioner of Central Excise Bangalore-III Commissionerate.

2. In the above mentioned order, among other things, the Adjudicating Authority has decided the classification of advertisement materials, which are actually self-adhesive vinyl sheets on which printing is done. The Commissioner has held that these products would not fall under Chapter 3919. By virtue of Chapter Note 2 of Section VII, Revenue has filed an appeal against the above decision on the following grounds.

(i) It is admitted by the assessee in his reply that the printing is done on self adhesive vinyl sheets which are classifiable under CH 3919.

(ii) As per Chapter Notes 2 of Section VII of CETA - 'Except for the goods of heading No. 39.18 or 39.19, plastics, rubber and articles thereof printed with

motifs, characters of pictorial representations, which are not merely incidental to the primary use of the goods, fall in CH 49.' Thus it follows that the goods falling under CH 39.18 and 39.19 even if printed with motifs, characters of pictorial representation which are not merely incidental to the primary use of the goods do not fall in CH 49 but remain classified in CH 39.18/39.19 as the case may be.

Going by the above section notes it would appear that the said goods should be classified under CH 39.19.

(iii) The assessee has obtained self-adhesive vinyl from M/s. Birla 3M who classify the said products under CH 39.19, the other supplies of raw materials viz. M/s. Kapoor Sales & M/s. Creative Images in their statements have confirmed that they have supplied only self adhesive vinyl to the assessee which is classifiable under CH 39.19.

(iv) CCE, B-III has placed reliance on the classification of the said products by Customs and held that the products would not fall under CH 39.19 is not in line with Chapter Note 2 of Section VII.3. Shri K. Sambhi Reddy, the learned JDR reiterated the Grounds of Appeal.

4. Shri G. Shiva Dass, the learned Advocate, appeared for the respondents and urged the following points: (i) The learned Advocate explained the process undertaken by them.

Customers approach the respondents with certain images, contained in floppies or CDs and require the respondents to provide them the advertising material containing the images. After scanning and effecting suitable modifications in computer, the correct image is printed on the specially treated paper called Electrostatic Paper.

The image in the Electrostatic Paper is then transferred to different sub-strates like Vinyl through the process of 'Thermo Copying'. The Commissioner, in the impugned order, holds that the above process amounts to manufacture but, the respondents challenged the above finding and said that the activity undertaken by the respondent does not amount to manufacture since the Vinyl remains as Vinyl

both before and after the process of incorporation of the images. The following case-laws were relied on: (a) Swastik Packaging, Bombay v. CCE, Bombay 1986 (23) ELT 217(Tribunal) (ii) Even if it is assumed that the above process amounts to manufacture, the resultant product would fall under CH 49 as product of Printing Industry, which is exempt from duty. He relied on the following case-laws in support of the contention that the products, where printing gives essential character, are to be classified as products of printing industry only. Metagraphs Pvt. Ltd. v. CCE, Bombay (d) CCE, Aurangabad v. Adhunik Plastic Industries 1998 (98) ELT 365 (Tribunal) (f) CCE, Mumbai v. Kavisha 3-Dimension Pictures P. Ltd. 1998 (104) ELT 530 (Tribunal) CCE, Bombay v. New Jack Printing Works (P) Ltd. 1999 (105) ELT 440 (Tribunal) (h) Rathika Pvt. Ltd. v. CCE & C, Baroda 2001 (97) ECR 431 (Tribunal) Classic Stripes Private Ltd. v. CCE, Mumbai-IV 2001 (131) ELT 281 (Tri.-Mumbai) (j) Tanzeem Screen Arts v. CCE, Mumbai-I - 2001 (131) ELT 656 (Tri.-Mumbai) (iii) In the present case, the raw material is Vinyl. If the Vinyl is classifiable under CH 3921, then as per Note 2 to Section VII of the Central Excise Tariff, the articles printed with motifs and characteristics of pictorial representations, which are not merely incidental to primary use of the goods, would fall under Chapter 49.

While coming to the above conclusion, the Commissioner, has taken into account the fact that the indigenous as well as imported Vinyl has been classified under CH 3921. Once the Customs has classified the item under CH 3921, by virtue of Chapter Note 2 to Section VII, the resultant product will come under Chapter 49 only. When the Customs classify the Vinyl under CH 3921, it is not open to the Central Excise Authorities to contend that the classification of the said product is not under CH 3921 but under CH 3919. The following case-laws were relied on: Jay Industries, Hyderabad v. CCE, Hyderabad 1984 (16) ELT 462 (Tribunal) CCE v. Kinetic Engineering Ltd. As regards the raw material indigenously purchased after being classified under CH 3919, Note 2 would not apply, as the same would come into play only when the respondent manufactures item falling under CH 3919 and undertakes printing on them directly.

5. The learned Advocate displayed the samples of the final product produced by the respondents in the court.

6. We have gone through the records of the case carefully. The short point in this appeal is the classification of the 'Vinyl adhesive sheet' on which printing is done for advertising purpose. Revenue is aggrieved over the fact that the Commissioner has held that the said product would not fall under Chapter 39. In order to appreciate the issue, we should examine Note 2 of Section VII, which is reproduced below: Except for the goods of heading No. 39.18 or 39.19, plastics, rubber and articles thereof, printed with motifs, characters of pictorial representations, which are not merely incidental to the primary use of the goods, fall in Chapter 49.

On going through the above note, it is clear that the above note would not be applicable to goods of heading 39.18 or 39.19. It is seen from the records that in the present case, the raw material 'Vinyl' used for the manufacture of electrostatic prints, has been classified under CH 3921. In that case, Note 2 of Section VII would clearly be applicable and the final product would be covered under Chapter 49. There is nothing wrong in the reasoning adopted by the Commissioner. Once the product comes under Chapter 49, it is considered as product of printing industry and the duty on products of printing industry is NIL. As regards the activity of printing, the same does not amount to manufacture in view of the decided case-laws on the subject. In the present case, no new product emerges after the printing process is done. In these circumstances, Revenue's contention that the impugned product should be classified under Chapter 39 is not acceptable. Thus, the appeal of the Revenue has no merits and the same is dismissed by upholding the OIO. The cross objection filed by the respondents is allowed.

(Operative portion of this Order was pronounced in open court on conclusion of hearing.)

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