Ceramic and Artware Unit Vs. Collector of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/4284

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-05-1988

Reported in : (1989)(43)ELT693TriDel

Appellant : Ceramic and Artware Unit

Respondent : Collector of C. Ex.

Judgement :

1. The issue in this appeal relates to the claim put forward by the appellants, M/s. Ceramic and Artware Unit, for exemption from duty in respect of candles manufactured by them for use in water filters. They claim exemption under Notification 104/82-C.E., dated 28-2-1982. The Assistant Collector under his order dated 26-7-1983 held that the appellants were entitled to the exemption claimed. On appeal therefrom the Collector (Appeals) under his order dated 16-12-1983 denied the claim for exemption and allowed the appeal, restricting the claim for duty to the normal period of six months. This appeal is against the said order.

2. We have heard Shri M.L. Routh, Consultant for the appellants and Shri L.C. Chakraborty for the department.

3. Sl. No. 30 of Notification 104/82 reads "candles". Admittedly the subject goods (filter candles used in water filters) are classifiable under Item 68-CET. The question is whether they are entitled to benefit of exemption under Notification 104/82 under Sl. No. 30 thereof.

4. Shri Routh submits that the subject goods are known in the trade as candles and, therefore, they will be entitled to the exemption claimed.

On the other hand the case for the department is that Sl. No. 30 in the notification related to the wax candles, as they alone are normally known in the trade as candles and not the subject goods which are known as filter candles only. Shri Routh in this connection has referred us to IS-7402 (Part II) 1975. He particularly refers us to para 4.4 and the note therein. The same reads: "4.4. Dimensions: Filter candles shall be of dimensions as shown in figure-I. Note: Candles of other sizes or shapes may be made subject to agreement between the purchaser and the supplier." He contends that the Indian standards has also thus referred to the subject goods in the above note as candles only. But we may note that the note relates to para 4.4 which refers to filter candles. Therefore, the word candles in the note refers to filter candles only. In fact we may note that in the earlier paragraphs the words used consistenlty are "filter candles".

5. Shri Routh then submits that these are available in the market under the name candles and that would, therefore, be the normal trade parlance. There is no acceptable evidence of such trade parlance. It also appears to us that the contention is obviously incorrect. If we go to a general store and ask for a candle we are likely to be supplied with wax candle only. May be if we go to a dealer in sanitaryware etc.

and ask for candles he may understand that our request relates to the ceramic filter candles. But again if we go to a shop which stocks wax candles as well as these filter candles and ask for candles we would be supplied with wax candles and not these filter candles, unless we specify filter candles. We are, therefore, not inclined to agree with the submission that the subject goods are known in the trade simply as candles.

6. Shri Routh then submitted that these candles have been allowed the exemption in certain other Collectorates. That, in our opinion, would not be a relevant criterion since we would not be bound by the orders of the said subordinate authorities and we have to come our conclusions on examining the issue on its merits.

7. Finally Shri Routh submitted that whenever there is an ambiguity the benefit thereof should go to the assessee and on that principle we should grant relief. However, our earlier discussion has shown that there can be no such ambiguity in the present case and hence the question of extending the benefit thereof to the appellants does not arise.

8. Accordingly the impugned order is upheld and this appeal is dismissed.