Commissioner of C. Ex. Vs. Mansi Packaging Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-14-2006

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of C. Ex.

Respondent : Mansi Packaging Pvt. Ltd.

Judgement :

1. Heard both sides in this appeal filed by the Revenue. The respondents are manufacturers of self adhesive BOPP film. The product consists of two layers, one release paper and the other BOPP film made from the plastic material. The lower authorities have classified it under chapter heading 48.14 on the ground that it is paper reinforced plastic sheets and paper predominates. The Revenue has filed this appeal on the ground that the product is declared as "Gummed or adhesive paper in rolls" and in their commercial invoices the assessees have claimed the product as "Gummed paper Rolls (B)". "B" stands for BOPP film is an admitted fact. The respondents are fully aware that they are clearing BOPP film by misdeclaring it as gummed paper rolls.

Therefore, since the paper is used in the nature of packing material film is more appropriately pleaded to be classified under heading 39.19 of CETA.3. After considering the rival classification, we find that the Revenue has a good case on merits of classification and the appeal as regards as classification is required to be allowed. However, we find that the Commissioner (Appeals) had also decided the appeal on the ground of limitation for raising the demand in the present matter.

There is no ground taken in the present appeal before us. Following the well settled position in the case of CCE, Madras v. T.K.K. Pharma Limited 2006 (198) E.L.T. 481 (S.C.) since the classifications list were for long time and declarations were filed accordingly and no objections ware taken by the department which required to be verified the declaration filed as provided by C.B.E. & C. Circular No. 124/35/95-CX, dated 10-5-1995. The bar of limitation would be in favour of the assessee in this case.

4. The appeal is accordingly disposed of by holding that on merits the classification issue is in favour of the Revenue. However, on bar of limitation would be in favour of the assessee. The appeal is disposed of accordingly.