

Commissioner of Central Excise Vs. Ajay Decorative Laminates Pvt.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-17-2006

Reported in : (2007)(116)ECC351

Judge : J Balasundaram, Vice, V T M.

Appellant : Commissioner of Central Excise

Respondent : Ajay Decorative Laminates Pvt.

Judgement :

1. The brief facts of the case are that the assessee herein, who are engaged in the manufacture of excisable goods falling under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985, filed classification list No. 3/93-94 dated 02/09/1993 for their excisable products claiming exemption under SSI Notification 1/93 dated 28/02/1993. The Assistant Commissioner approved the classification list by disallowing the benefit of concessional rate of duty for the products described as "PVC bonded (cladded) MS sheets width between 3 to 4 ft. thickness from 16g. to 26g., as the goods were not clad products, while the notification inter alia cover only flat rolled products of Iron and steel clad, at serial number 3 of the annexure to the notification. Since the assessee had cleared goods at concessional rate of duty owing the period 02/09/2006 to February, 1994 show cause notice was issued proposing recovery of Rs. 23,203.43 short paid by the assessee during the above period, demand was confirmed; Commissioner (Appeals) set aside the approval of the classification as well as the Asstt. Commissioner's order confirming the duty demand and remanded the cases for

fresh decision as seen from his order dated 14/08/1996. Post remand the Assistant Commissioner passed fresh order dated 07/11/1997 holding that the product under reference was not eligible to SSI exemption under the notification for the reason that it was plated flat rolled products of steel with PVC sheet pasted on it and not clad as claimed by the assessee. He, therefore, confirmed the demand raised in the show cause notice of Rs. 23,203.43 while the Commissioner (Appeals) in the present impugned order held as under: 4. I have perused the case records & also examined the submissions put forth by the appellants.

'CLADDING' - process of covering one material with another & bonding them together under high pressure & temperature. Also known as bonding.

Under words and phrases (of Sarkar), it is held that 'cladding' is also known as bonding. The process of covering one material with another and bonding them together under High temperature and pressure (Engg.). Viewing the above synopsis, I find that the Asstt.

Commr.'s assertion that "the PVC sheet can be separated from Zinc coated sheet if so required easily is not correct. Various classification lists were approved by the department and these approved lists, of course, attained finality as review was never taken up.

The manufacturing process described by the Asstt. Commr. in his order is the same, as explained, in the aforesaid synopsis. I do not find any reason as to why the benefit under the notification 1/93 should not be extended to the appellant. Accordingly, I set aside the order of the Asstt. Commr. and allow the appeal.

2. In the appeal memorandum filed before the Tribunal the ground raised by the Revenue is as under: The CL No. 3/93-94 dtd. 2.9.93 was finally approved wherein the exemption of concessional rate of duty for the goods falling under C.S.H. No. 7210.90 at Sr. No. 2 of the said C.L., under Notfn. No. 1/93 dtd. 28.2.93, was denied as the exemption under the said notification during the relevant period was not admissible to the subject goods and thereby the differential amount of duty short paid during the relevant period was confirmed rightly. In view of this, the Order-in-Appeal allowing the benefit under Notfn. No.

1/93 dtd.

28.2.93 on the aground that the CL was finally approved which was not reviewed, is factually and legally incorrect.

3. According to the assessee although CL No. 3/93-94 was finally approved without extending the benefit of the SSI notification and therefore the question of review of the CL did not arise, the fact remains that CLs for the years 1988-89 and 92-93 were approved by the department without extending the benefit of the notification ignoring the assessee's claim that the products were clad products and further, it is the contention of the respondents that since no ground has been raised in the appeal memorandum about the nature of the product, namely, as to whether it is a clad product or not it is not open to the Revenue to argue at this stage that the product cannot be considered as a clad product and the Tribunal cannot go into this question in the absence of any challenge to the nature of the product in the light of the Tribunal's order in 2002 (149) ELT 1441 (Tri - Mumbai) in the case of CCE, Pune v. Kirloskar Brothers Ltd. He further submits that against the denial of the benefit of SSI exemption for goods covered by Classification List No. 3/93-94 the assessee went up in appeal before the Commissioner (Appeals) who by his order dated August, 1995 had set aside the same and remanded the matter for fresh consideration and after remand it was the subject matter of the present adjudication order.

4. We find that the prayer of the Revenue is not only for setting aside the order-in-appeal passed by the Commissioner (Appeals) but for restoration of the order-in-original dated 07/11/1997 of the Assistant Commissioner. In other words the department seeks that we hold that the product in dispute is not entitled to the benefit of the notification for the reason that it is not clad product and therefore not covered under the notification. Therefore, the contention of the assessee that the question of nature of the product cannot be gone into by the Tribunal at this stage cannot be accepted. The benefit under the notification is available only if the product is fiat rolled product of iron and steel clad. This is the basic issue to be decided. The Revenue is correct in its contention that the Classification List No. 3/93-94 was not reviewed by the department for the reason that the benefit of the

notification was denied while granting the approval. The question of review by the department therefore does not arise.

5. Taking up the issue of nature of the product we find that the product is galvanized (zinc plated sheet) PVC pasted on one side with the aid of adhesives. The adhesives are applied manually and the film is pressed by a roller. The sheets are then cleared as PVC bonded MS sheets. What is to be seen is whether bonding is clad. It is brought to our notice by the learned SDR that cladding means that there must be an element of permanency. Something which can be easily separated cannot be treated as clad. (In the product in dispute the PVC film can be easily separated from the MS sheets). Support is drawn for this submission from the definition of cladding contained in Cambridge dictionary which defines cladding as a process where two metal sheets are bonded together under pressure in such a way that a percentage of each penetrates to the other. Further, reliance is placed on the Explanatory Notes to HSN, Chapter 72 at page 1220 wherein cladding is described as "association of layers of metals of different colours or natures by molecular interpretation of the surfaces in contact".

Examples of cladding process are also set out in the HSN and they are as under: The various cladding processes include pouring molten cladding metal on to the basic metal, followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any other method of deposition or superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (e.g., electro-cladding), in which the cladding metal (nickel, chromium, etc.) is applied to the basic metal by electroplating. Molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold rolling.

Ferrous products clad with non-ferrous metals remain in their respective headings in Chapter 72 provided that iron or steel is the predominating metal by weight (see Note 7 to Section XV). Iron or steel products, clad with another ferrous metal, which, according to the composition of the original products, or of the cladding metal, could be classified in two sub-Chapters (II, II, or IV) have similarly to be classified according to the metal predominating by weight (see Note 2 to this

Chapter); e.g. a bar of non-alloy ordinary steel clad with stainless steel is therefore classified in sub-Chapter II if the former metal predominates by weight, or in sub-Chapter III if not.

6. Applying the above we agree with the learned SDR that the product in dispute cannot be considered as a clad product so as to extend the benefit of eligibility to concessional rate of duty under SSI Notification No. 1/93 as claimed by the assesseees.

7. We, therefore, hold that the product in dispute is not eligible to the benefit of Notification 1/93, set aside the impugned order, and allow the appeal.

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