

Shellya Industries Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-11-1983

Reported in : (1983)LC1168DTri(Delhi)

Appellant : Shellya Industries

Respondent : Collector of Central Excise

Judgement :

1. The short point involved in this case is whether plastic sacks, known as high density polythelene woven sacks, are classifiable under item 15A(2) of the Central Excise Tariff or under item 68 thereof.
2. The appellants were not present when the case was called for hearing today. Their letter dated 27-6-83 was brought to our notice in which the appellants have stated that their case may be decided on the basis of their submissions made in their revision application (now the subject appeal before us after its transfer to the Tribunal) since they were not in a position to attend the hearing. We, therefore, decided to take up the case on merits.
3. We find from the records that the appellants were called upon to pay an amount of Rs. 7,731.55, being the duty leviable on HDPE woven sacks during the period from 1-3-75 to 30-6-75 at the rate of 1% under item 68 CET. In addition, a penalty of Rs. 250.00 was also imposed on them under Rule 173-Q of the Central Excise Rules, 1944 for violation of the provisions of Rules 173-F and 173-G on the ground that they removed the goods without payment of duty during the aforesaid period.

Before the Assistant Collector, the appellants defence was mainly two-fold- (1) HDPE woven sacks fell under item 15A(2) and not under item 68, and (2) in any case, they were entitled to complete exemption under item 68 by virtue of notification No. 54/75-C.E. as the number of workers engaged in their factory in each of the three shifts did not exceed On the first count, the Assistant Collector held against the appellants on the ground that the goods in this case were made out of HDPE woven fabric which was classifiable as an art silk fabric or man-made fabric under item 22, CET and that sacks made out of such fabric could not be classified under item 15A(2). The Appellate Collector agreed with the Assistant Collector on this count and observed that the CCCN classified plastic sacks as articles of textiles in Section XI thereof and not as articles of plastics under heading 39.07. However, the Appellate Collector remanded the case back to the Assistant Collector so far as the second ground urged by the appellants, namely, the applicability of notification No. 54/75-C.E. was concerned. The issue before us is, therefore, confined to ground No. 1, i.e., classification of the goods under the Central Excise Tariff.

4. During the hearing before us, the Department's representative reiterated the arguments relied on by the Assistant Collector and the Appellate Collector and quoted from the West Bengal Collectorate trade notice No. 81/82 dated 21-4-82 which was based on a Tariff Advice issued by the Central Board of Excise & Customs. In response to a query from the Bench, she stated that she had no information regarding any fresh order passed by the Assistant Collector after remand of the matter to him by the Appellate Collector on the issue of applicability of notification No. 54/75-C.E.5. We have carefully considered the matter. Tariff item 15A(2) at the material time read as under :- "Articles made of plastics, all sorts, including tubes, rods, sheets, foils, sticks other rectangular or profile shapes, whether laminated or not, and whether rigid or flexible including lay flat tubings and polyvinyl chloride sheets, not otherwise specified." (1) the articles, in order to fall in the entry, should be made of plastics, and (2) they should not be specified elsewhere in the Central Excise Tariff.

Subject to these two conditions, the scope of the entry was indeed very wide as is apparent from the words "all sorts" occurring therein.

Further, the inclusive definition of the entry not only covered such obvious items as plastic drums, buckets, jars, mugs, combs etc., which were finished articles of plastics, but also other less obvious items like tubes, rods, sheets, foils etc. which may be supplied in length and may require further fabrication or cutting to size in order to become usable articles. The items specified in the inclusive portion of the entry did not restrict the scope of the entry but enlarged it further. The subject article, as its very name (HDPE woven sacks) signifies, is an article made of high density polythelene which is a plastic raw material. There is no dispute that the said article is entirely made of plastics. We, therefore, find force in the appellants' argument that as per the popular meaning or the trade meaning, the subject article is an article made of plastic (HDPE) and hence answers the judicial test of "articles made of plastics, all sorts" falling under item 15A(2) as per the principle laid down by the Supreme Court.

We are not impressed by the Assistant Collector's argument that since plastic sacks are made out of the HDPE woven fabrics which are classifiable as man-made fabrics under item 22, GET, the said plastic sacks would cease to be plastic articles and would fall under the residuary item 68. HDPE woven fabric falls under item 22 because the wording of the said item "man-made fabrics" is more specific for it and hence it is deemed to be excluded from item 15A(2) for the reason of the words "not otherwise specified" occurring in this item. But that logic does not apply to plastic sacks. There is no other specific item for them in the Central Excise Tariff. Since, by their own right, they remain an article made of plastic (HOPE), they should rightly fall in item 15A(2), the classification of the intermediate stage product, i.e.

HDPE woven fabaic, being of no consequence. The argument of the Appellate Collector that since heading 39.07 of the CCCN does not cover the subject article, they should be deemed to be out of the scope of the Central Excise Item 15A(2) also, is without force. CCCN, and so also the Customs Tariff which is largely based on the CCCN, have an elaborate scheme of section notes and chapter notes which determine the scope of their various chapters and headings. To be specific for the present case before us, textile and textile articles are excluded from the scope of Chapter 39 of the Customs Tariff by virtue of Note 1(f) to

Chapter 39 of the said Tariff. There is no corresponding exclusion note or explanation in the Central Excise Tariff. It cannot, therefore, be said that the scope of item 15A(2) is on par with heading 39.07 of the CCCN/Customs Tariff. In such a situation, the analogy drawn by the Appellate Collector does not hold good. In the circumstances, we hold that since item 15A(2) CET is more specific to cover HDPE woven sacks, they cannot be consigned to the residuary item 68.

6. Accordingly, we allow the appeal. The duty demanded from the appellants and the penalty imposed on them are set aside.

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