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Cce Vs. Nepa Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-30-2008

Judge : S Kang, Vice, K T Rakesh

Appellant : Cce

Respondent : Nepa Ltd.

Judgement :

1. Heard Jt. CDR as none appeared on behalf of respondent in spite of notice. Copy of notice also issued to the advocate of the respondent.

2. Revenue filed this appeal against the impugned order whereby Commissioner (Appeals) held as under: 6. I find that exemption Notification No. 60/88 was available only upto 22.07.96 and that it was merged with Notification No. 8/96 dated 23.07.96 (Sr. No. 48.17) w.e.f. 23.07.96. Moreover, the definition of the term Newsprint during the relevant period was that "newsprint" means paper intended for the printing of Newspapers and not as quoted in the impugned order. The Adjudicating Authority has also confirmed the duty demanded on the grounds that exemption under Notification 60/88 dated 01.03.88 is not available to them and not due to the fact that the goods were to be classified under heading 48.02. This would mean that though the Show Cause Notices proposed to demand duty @ 20% Adv. (under heading 48.02) and have proposed to confirm the differential duty of Rs. 2,63,536/-, the Adjudicating Authority has confirmed the duty by denying exemption under Notification No. 60/88 which, however, was not availed by Appellants as they had paid duty @ 10% Adv. Applicable to heading No. 48.01.

Further, the classification under heading 48.01 quoted by the Appellants based on orders dated 25.11.92 and 11.02.93 are also relevant for the issue, as the paper manufactured by the Appellants was classified under heading 48.01 only in these orders. Further, there is no doubt about the Appellants being a manufacturer of Newsprint specified under schedule 1 of the Newsprint control order.

Hence, the demand confirmed in the impugned order is not sustainable and I set aside the same as also the penalty imposed on them.

3. Contention of revenue is that as the paper in question was cleared to the customers who are not in the business of newspaper and there is no evidence produced by the respondent before the lower authority that the paper in question was used news print. The contention is that as per Note 3 of Chapter 48 of the Tariff News Print means paper of a kind intended for printing of a newspaper. The contention is that in the present case, as the paper, in question, was cleared to the customers who are not in the business of printing of newspapers, therefore, the goods cleared by the appellant are not classifiable as news print under sub-heading 48.01 of tariff but the same is classifiable under heading 48.02 of the tariff which covers un-coated paper and paper coated of kind use for writing, printing etc. There is no evidence that the paper in question regarding which demand is confirmed is for printing of newspapers, therefore, the impugned order is not sustainable.

4. We find, as per the Annexure to show cause notice, the paper in question was cleared to the education board or other such organization which are not in the business of printing of newspaper. As per Chapter Note 3 of Chapter 48 of the tariff, the news print covers the paper intending for printing paper of newspaper. We find, there is no evidence on record to show the consignments of paper in question was intended for printing of newspaper. Therefore, the impugned order is not sustainable hence set aside and the adjudication order is restored.

Appeal is allowed.

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