

In Re: Crystal Interior Products

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Court : Authority for Advance Rulings

Decided On : Oct-12-2004

Reported in : (2005)(98)ECC131

Judge : S S Quadri, S Pal, B Agrawal

Appellant : In Re: Crystal Interior Products

Judgement :

Appellants: In Re: Crystal Interior Products Vs.

Syed Shah Mohammad Quadri, J. (Chairman), Somnath Pal and B.A. Agrawal, Members For Respondents/Defendant: A.K. Roy, Jt. CDR and Sanjay Singh, Superintendent Interpretation - Advance Ruling--Section 23D(2) of the Central Excise Act, 1944--Under Clause (a) of the first proviso to Sub-section (2) of Section 23D, the Authority cannot allow the application [cannot entertain for pronouncing advance ruling under Sub-section (4) thereof].

Application to Authority of Advance Ruling - Rejection - Where the question of classification is pending before the Central Excise Authority and a situation postulated in Clause (a) of the first proviso to Sub-section (2) of Section 23D, CE Act exists--Application is liable to be rejected.

Advance ruling - Section 23C, CE Act - Iron and steel wire--Manufacture of goods already started--No question seeking advance ruling can be entertained by the Authority, the activity cannot be said to be an activity proposed to be undertaken.

1. This is an application under Section 23C of the Central Excise Act, 1944, (for short the "Act"), seeking advance ruling of the Authority on the following question :- "Whether the products in question are classifiable under Chapter Heading 7323.90 or 7326.19 or any other Chapter Head or more than one Chapter Head ?"

2. The applicant is a resident Indian partnership firm which is a S.S.I. unit. It claims to be in the process of setting up a joint venture. It is engaged in the manufacture and sale of the iron and steel wire products. It says that the products in question are classified by the excise department under Chapter heading 7326.19 and states that by its letter dated 7-4-2004, it has accepted the classification provisionally subject to final ruling by the Advance Rulings Authority, which the department has also accepted.

4. After examining the application and the comments of the Commissioner, the Authority issued a notice to the applicant on 4th June, 2004 requiring the applicant to explain as to why the application should not be rejected on any one or more of the following grounds :- (i) the details and documentary evidence in respect of the non-resident co-venturer in the proposed joint venture have not been provided in the application; (ii) the question raised in the application appears to fall under Clause (a) of the first proviso to Sub-section (2) of Section 23D of the Act; (iii) the applicant appears to have already commenced the activity of manufacture of goods which are the subject-matter of the advance ruling application.

5. In so far as the first ground is concerned, the applicant has complied with the requirement of the notice. Regarding grounds (ii) and (iii), the application is listed today for hearing the applicant and the Commissioner.

6. To appreciate the point involved in the second ground, it would be useful to refer to Sub-section (2) of Section 23D which is in the following terms: "(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application: Provided that the Authority shall not allow the application where the question raised in the application is, - (a) already pending in the applicant's case before any Central Excise Officer, the Appellate Tribunal or any Court; (b) the same as in a matter already decided by the Appellate Tribunal or any Court: Provided further that no application shall be rejected under this sub-

section unless an opportunity has been given to the applicant of being heard: Provided also that where the application is rejected, reasons for such rejection shall be given in the order".

7. A perusal of the provisions, extracted above, would show that under Clause (a) of the first proviso to Sub-section (2) of Section 23D, the Authority cannot allow the application [cannot entertain for pronouncing advance ruling under Sub-section (4) thereof], if the question raised in the application is already pending in the applicant's case before any Central Excise Officer or Appellate Tribunal or any Court. The letter of the Assistant Commissioner of Central Excise, Division -IV, Surat-I dated 26th April, 2004, addressed to the applicant implies that the question of classification is pending before the Division-IV, Surat-I. The applicant, it appears, has approached the Commissioner for classification of the goods and addressed letters dated 29-11-2003 and 7-4-2004. It was in response to those letters that the aforementioned letter of the Assistant Commissioner was issued. A reading of that letter as well as the letter of 25th May, 2004 leaves no doubt in our mind that the question of classification is pending before the Central Excise Authority and a situation postulated in Clause (a) of the first proviso to Sub-section (2) of Section 23D exists. On this ground alone, the application is liable to be rejected.

8. However, as we have referred to ground (iii) in our notice, we would take up that point as well. This relates to commencement of activity of manufacture of goods. A reference to the definition of "advance ruling", in this connection, would be pertinent. Clause (b) of Section 23A of the Act defines "advance ruling" thus: "advance ruling" means the determination, by the authority of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity proposed to be undertaken, by the applicant." 9. A plain reading of the definition makes it clear that "advance ruling" means the determination, by the Authority, of a question of law or fact specified in the application regarding liability to pay duty in relation to an activity proposed to be undertaken by the applicant. The question that arises here is whether the applicant is at the stage of proposing to undertake the activity or has already commenced the activity of manufacture of goods.

10. In response to the letter issued by the Secretariat of the Authority on 14th May, 2004, seeking clarification in that regard, the applicant replied by its letter dated 22nd May, 2004. Para '4' of that letter is relevant here and reads thus - "4. The point regarding the manufacture of the excisable items for which advance ruling is applied, please refer to the statements of fact given with application in which we have stated that yes we do manufacture the said goods at present, (emphasis supplied)." 10. It is categorically admitted in the para, referred to above, that the applicant has already started manufacturing the goods in question.

In view of this factual position, the activity cannot be said to be an activity proposed to be undertaken. Therefore, in respect of the aforementioned goods, no question seeking advance ruling can be entertained by the Authority.

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