Collector of Central Excise Vs. Garware Nylons

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-30-1993

Reported in : (1994)(69)ELT142Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Garware Nylons

Judgement :

1. This is an appeal from the revenue against the Order in Appeal No.M-1299/PN-212/85 dt. 14-8-1985.

2. The facts of the case limited for disposal of the appeal are that the respondents filed a classification list No. 49/82 dt. 31-3-1982 effective from 28-2-1982 in respect of non-cellulosic unstretched waste. This classification list has been filed under Tariff Item 68 as per the approval granted by the Asst. Collector in an earlier classification list No. 54/81 effective from 1-3-1981. However while approving this classification list No. 49/82 effective from 28-2-1982, the Asst. Collector directed that the classification for this waste is approved provisionally subject to observance of provisions of Rule 9(b) of the Central Excise Rules. Subsequently a show cause notice was issued on 10-2-1983 proposing to classify the product under Tariff Item 18(IV) instead of Tariff Item 68. Thereafter the Asst. Collector decided the classification under Tariff Item 18-IV, as a result of which demands were also issued covering the period from 28-2-1982 till the approval of the classification list finally. The respondents challenged these demands before the Collector (Appeals). The Collector (Appeals), while confirming the classification

under 18(IV), allowed the appeal of the respondents partly holding that because during the past period 1981-82, classification was done under Item 68 by the Asst.

Collector and the review proceedings initiated against that classification were dropped by the Collector, the demands can be enforced only for the period of 6 months from the date of issue of the show cause notice being 10-2-1983. The revenue have come up in appeal against this part of the order of the Collector (Appeals).

3. The respondents have also filed a cross-objection. On query, Shri Mhaiskar representing the respondents fairly agreed that they have accepted the classification under Tariff Item 18(IV) and they have not challenged that even in the cross-objection. However their contention is that the classification list No. 54/81 effective from 1-3-1981 was changed to Tariff Item 68 by the Asst. Collector without even giving them an opportunity and on that basis only, they have filed the subsequent classification list 49/82. Hence there was no cause for provisional assessment to be ordered. Moreover they have not filed any provisional bond under Rule 9(b). Hence the assessment cannot be considered to be provisional. The assessments were final. Hence the demand raised subsequently is time-barred. He therefore pleaded that the order of the Collector (Appeals) should not be disturbed. He seeks to rely on the Excise Law Times on page 386, to point out that the Supreme Court have dismissed the appeal filed by the Department opposing the contention of the Tribunal that the demands can only be prospective and the re-classification can only be applicable prospectively.

4. After hearing both the sides and on perusal of the documents cited by the department and also by the other side, we find that in so far as classification No. 54/81 effective from 1-3-1981 is concerned it has acquired finality and any demand for the period 1-3-1981 to 28-2-1982 cannot be raised by the department and there is no such demand also for consideration before us. However, when the respondents filed the classification list No. 49/82 effective from 28-2-1982, the Asst.

Collector has approved the classification under Tariff Item 68, only provisionally. This is evident from the order of approval given in the classification list. He also

directed that the assessment should be done under Rule 9(b) of the Central Excise Rules. Accordingly he issued a show cause notice for finalising the assessment proposing re-classification under Tariff Item 18(IV). On deciding this show cause notice, the demands for the period during provisional assessment has been confirmed. When this factual position is not being disputed we have to allow this appeal of the Revenue, in view of the fact that the Supreme Court in the case of Samrat International reported in 1992 (58) E.L.T. 561 (SC), has held that where the classification lists are not finally approved and the assessments have taken place on RT 12 returns, those assessments are to be construed as provisional and the relevant date has to be reckoned from the date of finalisation of the assessment. In this case, there is an order of the Proper Officer directing the provisional assessment under Rule 9(b) of the C.E. Rules.

The question of execution of a bond is a procedural requirement and the Apex Court did not consider it a necessary requirement.

5. As regards the news item in E.L.T. referred to by the 1d. consultant that case is not relevant for considering the issues before us. In this case, there is a specific order for provisional assessment by the Proper Officer and only subject to this, C.L. was approved. The respondents have not appealed against this order of provisional assessment. They are deemed to have subjected themselves to the provisional assessment as ordered by the Asst. Collector, while approving the classification list No. 49/82. Hence the consequences, on finalising the provisional assessment are required to be borne by the respondents. Since the issue is directly covered by the Supreme Court judgment in the case of Samrat International, we allow the appeal of the Revenue. The cross-objection, which is only in the nature of the reply to the appeal, is therefore dismissed.