

Collector of C. Ex. Vs. Multilayers Composite (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-30-1994

Reported in : (1994)(73)ELT362TriDel

Appellant : Collector of C. Ex.

Respondent : Multilayers Composite (P) Ltd.

Judgement :

1. This appeal is directed against the impugned Order-in-Appeal passed by the Collector of Central Excise (Appeals), Calcutta.

2. Shortly put the facts of the case are that the respondents M/s.

Multilayers Composite (P) Ltd. are the manufacturers of Multilayer Plastic films, Miscellaneous Plastic Scrap, Plastic Zipper Bag, Plastic Scrap and Plastic films printed with motifs. The dispute in the instant case relates to the classification of Plastic Films printed with motifs. It is the case of the Revenue that the Respondents have filed their classification list effective from 1-1-1992 inter alia classifying the disputed goods, namely Plastic Films printed with motifs under Chapter 4901.90 for approval. On receipt of the same a Show Cause Notice dated 18-2-1992 was issued to the respondents to show cause as to why the subject goods be not classified under sub-heading 3920.32 on the ground that they are manufacturing multilayer plastic films out of Polyethylene granules; that these films are mainly used for packing of milk, oil, Ghee, liquor, etc. After manufacture of film they are printing the name of the user, name of the products, quantity, value etc.

as per the requirement of the buyers. These printings are merely incidental to the primary use of the plastic films printed with motifs would be coverable under chapter sub-heading 3920.32. The respondents hotly contested the Show Cause Notice justifying the classification of the subject goods under Chapter 4901.90 as claimed in the classification list. However, the concerned Assistant Collector of Central Excise and Customs negated the said defence of the appellants and ordered for the classification of the subject goods under Chapter Heading 3920.32. Against the order of the Assistant Collector the respondents filed their appeal before the Collector (Appeals) who vide his impugned order set aside the impugned order of the Assistant Collector and remanded the case to him for fresh examination in the light of the discussions made by him in his impugned order. Hence the present appeal of the Revenue.

3. Arguing on behalf of the Revenue Ld. JDR Shri Arora took us through the impugned order-in-appeal passed by the Collector (Appeals) and submitted that Collector (Appeals) wrongly relied upon the decision rendered by this Tribunal in the case of Rexor India Ltd. v. Collector of Central Excise, 1991 (52) E.L.T. 392, as the facts of that case are different from the facts of the present case that is to say the issue before the Tribunal in that case was as to whether the activity of metallising of duty paid printed polyester film brought from outside amounts to manufacture or not whereas in the present case the issue is the correct classification of the subject goods, namely, plastic films printed with motifs (Thickness not exceeding 0.25 mm). Hence the ratio of the said case was not applicable to the present case. Continuing further, he submitted that as per Section Note 2 of Section VII of Central Excise Tariff "printed plastic films" will merit classification under Heading No. 4901 only if printing is not merely incidental to the primary use of the goods which is not case here that is to say in the present case the printed plastic films are used only as packing material and printing of it is only an incidental activity. Hence Section Note 2 of Section VII, *ibid*, is not attracted and consequently in terms of Chapter Note 10 of Chapter 39, the subject goods are classifiable under Heading 3920.32. Continuing further, he also submitted that the product printed plastic films manufactured by the respondents are not the products of printing industry and cited the case of Collector of Customs v. Garden Silk Mills Ltd, 251. Hence falls under Chapter Heading 3920.32. He also

submitted that the respondents had also filed their another Appeal Nos. E/100/92 & E/259/92 before the East Regional Bench of this Tribunal at Calcutta against the decision of the Collector (Appeals) & Additional Collector, Bhubaneswar against the denial of the MODVAT Credit on printing ink used in the manufacture of printed plastic films and therein the respondents submitted that they are manufacturing printed plastic films and the same is classifiable under Heading 3921. This contention was accepted by the Tribunal in the said case while passing the Final Order No. A-760 & 761/CAL/92, dated 29-10-1992 and the MODVAT Credit on printing ink was allowed (see paragraph 6 of the order). In a nutshell his submission was that the respondents are taking two contrary stands to suit their convenience that is to say they have taken two different stands before two authorities, namely, before Collector (Appeals) that their goods are classifiable under Heading 4901 and before this Tribunal under Heading 3921 in order to avail both duty concession as well as MODVAT Credit on printing ink. He also submitted that the Collector (Appeals) wrongly relied upon the Trade Notice No. 61/87, dated 19-8-1987 issued by Bombay-I Collectorate for the purpose of the classification as these are irrelevant while deciding the issue of classification.

4. In reply Shri B.N. Sharma, Id. Counsel for the respondents while supporting the impugned orders cited the Final Order No. 39/92-C, dated 10-2-1992 passed by this Tribunal in the case of Collector of Customs & Central Excise v. Paper Products Ltd. and Collector of Customs and Central Excise v. Oriental Timber Industries, 1985 (20) E.L.T. 202 (SC).

5. We have considered the submissions and the case law cited at the Bar.

6. From the impugned Order-in-Appeal, it is clear that the Collector (Appeals) after setting aside the impugned Order-in-Original passed by the Asstt. Collector remanded the case to him for fresh examination in the light of the 'discussion made by him in his impugned Order. From the discussion portion of the impugned Order-in-Appeal we find that the case of Collector of Customs v. Garden Silk Mills Ltd., supra, decided by this Tribunal was not brought to his notice. In that case the Tribunal has extensively explained the meaning of the words and expression "printing industry" in the light of the decision rendered by the Apex Court in the

case of M.S. Co. Pvt. Ltd. v. Union of India, 1985 (19) E.L.T. 15. The Tribunal also referred to the meaning assigned to the word "printing" in Webster's Third New Dictionary, New Encyclopaedia Britannica (15th Edition) and also to the other cases. It further appears that the fact that the respondents in their other Appeal Nos. E/100/92 & E/259/92 filed before the East Regional Bench of this Tribunal at Calcutta contended that they are manufacturing printed plastic films and the same is classifiable under Heading 3921 which was accepted by the Tribunal and the modvat credit on printing ink was allowed (see Final Order No. A-760 & 761/CAL/92, dated 29-10-1992).

What would be the effect of this admission and allowing of the modvat credit on this admission under the said Order of the Tribunal was also not considered by the Collector (Appeals) obviously because it might not have brought to his notice or that it might not be available at the time of the passing of the impugned Order, as the said Final Order of the Tribunal is dated 29-10-1992 and the impugned Order-in-Appeal passed by the Collector is of 30-10-1992. Under these circumstances, we feel it expedient that no rider should be put on the Assistant Collector concerned while deciding the case afresh as has been done by the Collector (Appeals) and the Assistant Collector concerned should be asked to adjudicate the case afresh according to law after giving full opportunity to the respondents to put forth their claim. In other words, while deciding the issue afresh the Assistant Collector would not be bound by any opinion expressed by the Collector (Appeals) in his impugned Order-in-Appeal on the merits of the case.

7. In the result, we allow the appeal and modify the impugned Order-in-Appeal passed by the Collector (Appeals) to the extent that the Assistant Collector while examining the issue afresh would not feel bound by any opinion expressed by the Collector (Appeals) in his impugned Order. On receipt of the papers, he would adjudicate the case afresh in accordance with law and would keep in mind the ratio of the case law cited before us.

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