Profeel Sentinal Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-24-1994

Reported in : (1994)LC56Tri(Delhi)

Appellant : Profeel Sentinal

Respondent : Collector of Central Excise

Judgement :

1. These appeals arise out of orders dated 3rd August, 1992 and 14th October, 1992 both passed by the Collector of Central Excise (Appeals), Ahmedabad. The appellants who are engaged in the manufacture of cellular expanded polyethylene sheets and products made from such sheets. The Assistant Collector of Central Excise, Vadodara held that adhesive backed sheets and adhesive backed cut sheets of expanded polyethlene were classifiable under sub-heading 3919.00. He also held that profeel sets of cut pieces in square or rectangular shape and also milled sheets cut/sheets manufactured out of expanded polyethylene were classifiable under sub-heading 3921.19 of the Central Excise Tariff. In the appeals filed by the appellants against the orders passed by the Assistant Collector they claimed the classification of adhesive backed cut sheets and milled/cut sheets under sub-heading 3923.19 and sub-heading 3926.90 respectively. By the impugned orders the Collector (Appeals) upheld the order passed by the Assistant Collector classifying adhesive backed sheets and adhesive backed cut sheets under sub-heading 3919.00. He also held that profeel sheets of cut pieces in rectangular or square shapes were classifiable under sub-heading 3921.19. As

regards the classification of milled sheets/cut sheets the Collector (Appeals) accepted the appellants' contention that having been further worked they were classifiable under sub-heading 3926.90.

He, however, rejected the appellants' claim that the goods were eligible for exemption under Notification No. 186/75 dated 21-8-1975.

2. On behalf of the appellants Shri T. Ramesh, ld. Advocate appeared before us. He contended that the Collector (Appeals) had erred in holding that adhesive backed sheets and adhesive backed cut sheets manufactured by the appellants are self-adhesive sheets, classifiable under sub-heading 3919.00. He stated that the products in question cannot be treated as self-adhesive since they cannot firmly adhere to a variety of surfaces upon mere contact and without application of pressure. He contended that in terms of note 10 of Chapter 39 cut pieces sheets with adhesive on one surface have to be deemed as having been further worked upon and therefore, they have to be treated as articles of plastic ready for use. He stated that such self-adhesive sheets and Profeel set/sets being meant for use in connection with the packaging of goods by arranging them according to the requirement, they would be correctly classifiable under sub-heading 3923.19. He added that the Collector (Appeals) finding that the goods in question were not eligible for exemption under Notification No. 186/75 is also erroneous since the goods were meant for use in connection with the manufacture of goods or packaging of goods solely meant for export. He stated that even though the appellants had claimed that the goods were meant for packaging of goods solely meant for export, the Collector (Appeals) had not given any reasons for his finding that the appellants were not eligible for the benefit of Notification No. 186/75 dated 21-8-1975.

3. Appearing on behalf of the respondents Shri Sharad Bhansali, ld. SDR stated that as pointed out by the Collector (Appeals) the sheets in question were classifiable under sub-heading 3919.00 since on removal of the strip of paper stuck on one side of the sheet, it showed adhesive properties. He added that as held by the Collector (Appeals) the disputed self-adhesive sheets not being articles for the conveyance or packing of goods, they were not classifiable under

sub-heading 39.23. He submitted that sub-heading 3919.00 being more specific for the goods as compared to sub-heading 39.23 as observed by the Collector (Appeals) in terms of Rule 3(a) of the Interpretative Rules, sub-heading 3919.00 has to be preferred for the classification of the self-adhesive sheets in question. He stated that the self-adhesive sheets in question were not eligible for exemption under Notification No. 186/75 dated 21-8-1975 since they were not being used for the production of goods or for being used in connection with the production of such goods intended for export or for supply to a unit in a Free Trade Zone, Export Processing Zone or 100% Export Oriented Undertaking for the manufacture of goods solely for export. He added that there was nothing on record to show that in respect of the goods in question the procedure laid down in the notification had been followed or the prescribed conditions were satisfied. He pleaded for the rejection of the appeal.

4. We have examined the records of the case and considered the submissions made on behalf of both sides. It is seen that the questions required to be examined in this case are whether :- (i) the adhesive backed sheets / cut sheets of expanded polyethylene and profeel sets of cut pieces of polyethylene in square or rectangular shape would be classifiable under sub-headings 3919.00 and 3921.19 respectively as held by the Collector (Appeals) or under sub-heading 3923.19 as claimed by the appellants.

(ii) in respect of the self adhesive sheets in question the appellants were eligible to the benefit in terms of Notification No. 186/75 dated 21-8-1975.

5. Taking up the first point we refer to Headings 39.19, 39.21 and 39.23 of the Schedule to the Central Excise Tariff Act, 1985 which are reproduced below :--Heading Sub-heading Description of goodsNo. No.---1 2 3--39.19 3919.00 Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plas39.21 Other plates, sheets, film, foil and strip of plastics - cellular;39.23 Articles for conveyance or packing of goods, of plastics; stoppers, lids, caps polyethylene

adhesive backed sheets and polyethylene adhesive backed cut sheets manufactured by the appellants are polyethylene sheets in rectangular shape with a coating of adhesive on one side. The side coated with adhesive is covered with a strip of paper which can be easily peeled off. On account of the coating of adhesive, such sheets can be stuck to any surface by applying a slight pressure after peeling off the paper covering on the coated surface. Under these circumstances we are inclined to agree with the Collector (Appeals) that such adhesive backed or coated sheets and cut sheets would be more specifically covered by sub-heading 3919.00. In our view there is no force at all in the appellants' contention that such goods correctly fall under Heading 39.23 since plain self adhesive backed sheets of polyethylene cannot be deemed as articles for conveyance or packing of goods or for being used as stoppers, lids, caps and other closures. As observed by the Collector (Appeals) in terms of Note 10 to Chapter 39 the disputed products being only cut into regular geometric shapes but not having been further worked would not be treatable as articles of sub-heading 39.23. We, therefore, confirm the findings of the Collector (Appeals) that polyethylene adhesive backed sheets/cut sheets are correctly classifiable under sub-heading 3919.00 of the Central Excise Tariff Schedule. As far as profeel sets are concerned they are merely plain cut pieces of polyethylene in square or rectangular shape and evidently they also do not answer the description of the goods covered by Heading 39.23. Hence, even in respect of profeel set in square and rectangular shape we confirm the finding of the Collector (Appeals) that they would be classifiable under sub-heading 3921.19.

6. It is seen that in regard to the question whether the various types of polyethylene cut or milled sheets supplied to the Export Processing Zones and 100% Export Oriented Industries were eligible for exemption under Notification No. 186/75 dated 21-8-1975, the Collector (Appeals) held that the appellants were not eligible for the benefit of the said notification since the goods in question were meant for protecting the goods and not for containing them whereas the said notification talks about "packing" of goods and not packaging material. In this regard we refer to para 1 of the Notification No. 186/75 dated 21-8-1975 which is reproduced below :- "In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 the Central Government, being satisfied that it is

necessary in the public interest so to do, hereby exempts the excisable goods mentioned in Appendix 1 to this Notification, when brought into Santa Cruz Electronics Export Processing Zone, Bombay, from the factories of their manufacture situated in other parts of India for use by the industries located in the said zone for production of goods or for being used in connection with the production of such goods or for packaging of such goods intended solely for export from the whole of the duty of excise leviable thereon under Section 3 of the Central Excises and Salt Act, 1944 (1 of 1944), subject to the following conditions, namely :- (1) the consignee is authorised to establish manufacturing unit or units in the Santa Cruz Electronics Export Processing Zone; (2) the consignee brings the excisable goods directly from the factory of manufacture; (3) the entire excisable goods so brought are used by or on behalf of the consignee in the Santa Cruz Electronics Export Processing Zone in connection with the manufacture of goods solely meant for export and all such manufactured goods are exported; and (4) the procedure set out in Appendix II to this notification is followed in Santa Cruz Electronics Export Processing Zone." On a plain reading of the extract from the relevant notification reproduced above, we find that the words "for being used in connection with" qualify not only the words "for the production of goods" but also the words "for packaging of such goods". The words "Package" and "Packaging" as per the Shorter Oxford English Dictionary imply as under :-Travancore Cochin Chemicals Ltd. v. Collector of Central Excise, reported in 1990 (50) E.L.T. 172 that wider meaning has to be given to the expression "used in or in relation to the manufacture". On the ratio of the said decision a wider meaning has to be given to the expression "used in connection with". For this reason it follows that Notification No.186/75 covers not only "packages" or "containers" for packing of goods manufactured by the units in the Export Processing Zone and intended solely for export but also all other goods required in connection with the packaging of such goods. Under these circumstances, we hold that the various types of cellular expanded polyethylene sheets which are placed in containers or cartons for preventing damage during transportation and in handling would also be eligible for exemption under Notification No. 186/75 provided the. procedural requirements and other conditions laid down in the notification are fulfilled.

7. It is seen that the question whether in respect of the goods in question the appellants had fulfilled the conditions of the Notification No. 186/75 was not examined by the lower authorities. We, therefore, remand the matter to the Assistant Collector for reconsideration of the matter in accordance with law. We direct that he should keep in view the findings in this order and grant a personal hearing to the appellants before deciding the matter.