

Collector of C. Ex. Vs. Vijaya Packaging Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-16-1995

Reported in : (2000)(118)ELT160TriDel

Appellant : Collector of C. Ex.

Respondent : Vijaya Packaging Industries

Judgement :

1. This is a department's appeal against the order of Collector (Appeals), Madras dated 9-2-1990.
2. The learned DR stated that the respondents are manufacturers of 'printed cartons' etc. They had submitted a classification list 2/87 with effect from 1-4-1987 claiming classification of their printed cartons under 4818.12 and claiming exemption under Notification No.140/86.
3. The Assistant Collector issued a show cause notice as it was felt that they were classifiable under 4818.13 as 'others'.
4. The Assistant Collector, however, after hearing the party dropped the demand and classified the product under 4818.12.
5. This was not acceptable to the department and therefore, the appeal was filed before the Collector (Appeals).

6. The Collector (Appeals), however, confirmed the order of the Assistant Collector and rejected the appeal. Hence, this petition.

7. It was their contention that 4818.12 covers only those printed cartons etc. which were made wholly out of paper or paper board of specified heading and sub-heading. These include, inter alia, 48.08 but do not include 48.05.

8. The respondents are admittedly using the duplex board in the manufacture of corrugated board of which these cartons are made. Thus, these cartons are not wholly made of articles falling under specified sub-heading.

9. He would like to emphasise the word wholly in the Heading 4818.12 and reiterate that the duplex board used by the appellants does not fall under any of these specified headings or sub-headings. Hence, the product was correctly classifiable under 4818.13 as other printed cartons.

10. The learned Counsel speaking for the respondents stated that their printed cartons are being made from the products falling under Heading 48.08 which is one of the specified headings under 4818.12.

11. Heading 4818.08 covers, inter alia, corrugated paper and paper board. For purposes of corrugation, they have to purchase the paper and paperboard and pass it through the corrugating machines for making a carton. It is necessary that this corrugated sheet is pasted on to a paper or paperboard after waxing or varnishing etc. depending upon customers requirements. Similarly, one or more than one ply are used depending upon the customers requirements. The cartons in question are wholly made of such materials.

12. It was also their submission that the fact that the duplex board itself was classifiable under 48.05 is not material as the duplex board has to be necessarily used for making corrugated board, and it is this corrugated board which was classifiable under specified Heading 48.08.

Hence, the classification as declared by them and approved by the Assistant Collector and confirmed by Collector (Appeals) was correct.

13. In response to queries from the Bench, the learned Counsel stated that they are manufacturer of a number of articles and had declared the articles falling under 48.08 also in their classification list and its classification was approved.

14. It was also his submission that they were also selling corrugated board and paperboard, they were also manufacturing and selling unprinted cartons made of such corrugated paper and paperboard and the department has not raised any dispute about them.

15. In response to further queries from the Bench, the learned DR filed a copy of the relevant classification list and accepted that the respondents had declared the articles falling under 4808.10 also and claimed exemption and the same was approved. The show cause notice was issued only with respect to the item of printed cartons, boxes and containers etc. made of the corrugated boards.

16. However, he would like to draw attention to the statement of facts mentioned in the appeal memo in which it is mentioned that the cartons etc. were made from corrugated paper and paperboard in combination with duplex board which were wax coated, ply coated and varnished and corrugated board and it was his submission that paper and paperboard, coated, impregnated or covered with wax, stearin, oil or glycerol was classifiable under 4811.40.

17. He accepts that the percentage of the material used for making cartons was the right criterion but in view of the above mentioned facts in the statement of facts, a question arises whether the printed cartons in question were made wholly of the articles falling under 48.08 or they were made of a combination of the above articles. He has, therefore, no objection if an opportunity is given to the department to verify the facts.

18. The learned Counsel stated that the Heading (4811.40) pointed out by the learned DR refers only to the articles made of paper and paperboard whereas their material was corrugated board. However, he has no objection if the matter is decided in principle and remanded for verification of facts.

21. We hold that in order to determine whether the product was correctly classifiable under 4818.12, it was necessary to find out the heading in which the parent material was classifiable and if it was so classifiable in any of the specified headings or sub-headings under 4818.12 then classification under this heading would be justifiable.

22. It is necessary to note, in this connection, that we are only concerned here with immediate parent and not with the material of which the parent material is made of. Therefore, if the material of which the cartons etc. are made fall under 48.08 then the classification under Heading 4818.12 would be in order. However, this is a question related to facts.

23. The learned Counsel's plea is that the use of paper and paper-board for making of a corrugated article falling under this Chapter was an essential and necessary feature of such manufacturing has prima facie a lot of force but this is also subject to verification.

24. Similarly, the learned DR's contention that some of the material used may fall under 4811.40 is also subject matter of verification.

25. Since, no specific finding or indication as to whether such a verification was conducted has been recorded in the impugned orders and the classification basically depends upon this determination, therefore, the impugned orders are liable to be set aside.

26. In this connection, before giving any direction we consider it necessary to mention that in the copy of classification list produced before us one of the products shown is articles of paper and paper beard falling under 4808.10 and the same has been approved by the Assistant Collector and not challenged before us. This fact was also required to be kept in view while finalising the matter.

27. The impugned orders are, therefore, set aside and the matter is remanded to the Assistant Collector with the direction that he may verify the facts with reference to the above submissions from both the sides and decide the matter keeping in view our above observations and the law. Before passing the order he may give

respondents an opportunity of making submissions before him.

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