

Choksi Brothers Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-10-1995

Reported in : (1996)(84)ELT491TriDel

Appellant : Choksi Brothers

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order-in-appeal dated 24-11-1988 passed and issued by the Collector of Central Excise (Appeals), Bombay.

By the said order-in-appeal, the Collector of Central Excise (Appeals) has rejected the appellants' appeal against the order-in-original dated 5-1-1987 passed by the Assistant Collector of Central Excise Division K/II, Bombay I Collectorate. By the said order-in-original, the Assistant Collector had rejected the appellants' claim for treating following products, namely - as non-excisable and not falling under Chapter sub-heading 3706 .00, He has also rejected the appellants' claim for full exemption of duty to the "Photographic Mounts" (i.e. Printer and/or Embossed paper Boards).

2. When the matter was called, none was present for the appellants, who have sought decision on merits. They have contended that the products X-Ray developer powder and Lith developer powder are made from bought out chemical ingredients and the process they undertake is only physical mixing of these ingredients. There is no chemical reaction.

Hence, they say no process of manufacture is involved as no new article has resulted. Nor are they put up in a form ready for use in photography since they are in powder form. These have to be made into a solution before they become ready for use for photographic purposes.

The photo mounts, according to the appellants, is nothing but converted paper board. They merely do the bonding of duty paid paper and board with adhesive which are cut into different sizes and thereafter printed and embossed. According to the appellants, the board remains as board only notwithstanding these processes and hence they say that goods squarely fall under sub-heading 4807.99 CETA. They cannot, therefore, be relegated to Heading 48.18. which is a residuary item when Heading 48.07 specifically covers the goods, according to the appellants. Shri J.P. Singh, Id. D.R., reiterated the reasoning of the lower authorities and contended that as chemical preparations for photographic uses the X-Ray developer powder and Lith developer powder have correctly been classified under Heading 37.06 CETA. The photo mounts have by the processes at the hands of the appellants' become commercially different articles with distinct, name, character and use from the pasted paper boards which is the starting point and hence they rightly fall for classification as articles of paper under Heading 48.18 CETA.3. The written submissions of the appellants and the oral arguments put forth by the Id. D.R. have been carefully considered. In respect of the products X-Ray powder developer and powder fixer and Lith powder developer the appellants' arguments are two-fold. First, that they are made by physical mixing of duty paid chemicals and some preservatives involving no chemical reaction. No new product, they say, emerges as a result, and hence no "manufacture" has taken place to attract excise duty. Secondly, these goods cannot, according to them, be called put up in a form for ready use. This is because the goods are in powder form and unless these are dissolved in water, changed from solid to liquid form, they cannot be used for photographic purpose. Dealing with the first of these arguments, the prevalent and generally accepted test, as laid down by the Hon'ble Supreme Court in the case of Ujagar Prints v. Union of India - 1989 (39) E.L.T. 493 (S.C.) to ascertain that there is "manufacture" is whether the change or series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity,

but is, instead, recognised as a distinct and new article that has emerged as a result of the processes. In the present case X-Ray developer powder consists mainly of hydroquinone alongwith other inorganic chemicals in fixed propotion . These chemicals are packed in two sets with printed instructions on the packets. The chemicals are packed as under:Hydroquinone Sodium Sulphate Hydroquinone Sodium Formaldehyde The goods are sold and marketed as X-Ray Developer and the other product is marketed for use in developing Lith films. Thus the chemicals mixed in fixed proportions and packed in sets are marketed as products which have distinct, name, use and character different from the raw material chemicals and commercially the emergent developer powder can no longer be regarded as the chemicals of which they are made because of the process of mixing in fixed proportions and being packed in sets for the purpose of being marketed as developer powders for photographic uses. Thus it is held that these goods are new articles coming into existence as a result of processes which amount to "manufacture". Taking up the second contention of the appellants, the Heading 37.06 CETA 1985 reads as: "chemical preparations for photographic uses (other than varnishes, glues, adhesives, and similar preparations); unmixed products for photographic uses, put up in a form for ready use it is seen that the criterion of the article being put up in a form ready for use is to be applied to the unmixed products occurring in later part of the heading after the semicolon. If the articles answer the description of chemical preparations for photographic uses, then they would be covered by the first portion of the heading 37.06. In the present case, the two articles developer powders are preparations of pre-determined mix in required quantities of chemicals, in Part A and Part B sets with packing indicating suitability of products for use in photography. Each product by reference to its chemical properties will fall under description of chemical preparation. They are not preparations of the kind excluded from the Tariff heading. In this view of the matter, the two articles X-Ray Developer Powder and Lith Developer Powder have rightly been held to be classifiable under sub-heading 3706.00 CETA.4. As regards the product photographic mounts, these are manufactured out of grey boards of 30" x 25" and 30" x 40" (approx). White paper/cream paper is pasted on it on both sides and these boards are cleared after cutting, and embossing designs thereon and after printing on Toddler Machine. Clearly, the processes

employed especially cutting to size, embossing, and printing take the product beyond the category of converted paper simpliciter and they become recognisable as photo mounts whose dictionary meaning is "a thick/ stiff paper which provides a margin for a picture or photograph fixed on it". Even, according to the appellants in commercial parlance also these are known as 'photo mounts'. The product hence has correctly been classified as an article of paper under sub-heading 4818.90 CETA, 1985. In the result, there is no reason to interfere with the order passed by the lower authorities. The appeal is rejected.

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