

Collector of C. Ex. Vs. Garware Plastics and Polyester

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-16-1995

Reported in : (1996)(85)ELT271TriDel

Appellant : Collector of C. Ex.

Respondent : Garware Plastics and Polyester

Judgement :

1. The issue for determination in the above appeal preferred by the Revenue against the order of the Collector (Appeals) is the eligibility of "TV Front Cabinet with metal inserts" falling under T.I. 68 of the First Schedule to the Erstwhile Central Excise Tariff manufactured by the respondents to the benefit of total exemption from duty under Notification No. 182/82, dated 11-5-1982. We have heard Shri Sanjeev Sachdeva, learned SDR and Shri R.G. Sheth, learned Counsel.

"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts articles made of plastics, falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) from the whole of the duty of excise leviable thereon: (a) such articles are produced out of artificial resins or plastic materials or cellulose esters and ethers in any form falling under sub-item (1) of Item No. 15A of the said First Schedule on which the duty of excise or the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975) as the case may be, has already been paid, or (b) such articles are produced out of scrap of plastics. Explanation :-

For the purposes of this Notification "plastics" means the various artificial or synthetic resins or plastic materials or cellulose esters and ethers included in sub-item (1) of Item No. 15A of the aforesaid First Schedule." There is no dispute that the conditions stipulated in the Notification have been fulfilled and the only dispute is as to whether the item can be considered as an article made of plastics. We find that the Assistant Collector had occasion to examine the item and in the adjudication order, he has recorded that except for four metal screws, the said item contains no metal insert rest of the body being of moulded plastics. The TV front cabinet is made directly from the plastic raw material and the inserts which are four small screws get embedded directly in it. The respondents have stated in their Cross Objection that the metal inserts are bought out items. The learned DR has not been able to substantiate his contention that the subject goods are not commercially known as articles of plastics. He, however, seeks to rely upon the judgment of the Hon'ble Supreme Court in the case of Geep Flashlight Industries Ltd. v. Union of India reported in 1985 (22) E.L.T. 3 SC in support of the proposition that "articles made of plastic" means article made wholly of commodity commercially known as plastics and not articles made from plastics along with other material.

We have carefully perused the judgment cited supra. The Supreme Court was considering classification of plastic torch manufactured by the appellants therein - whether under Tariff Item 15A(2) as claimed by the assesseees or under Tariff Item 68 as claimed by the Department and upheld by the Allahabad High Court, and the Court held that plastic torch is a distinct and different commodity commonly known as torch in the market and by no canon of construction, a plastic torch can be read in conjunction with plastic tubes, rods, sheets, foils, etc. made of plastics. In the present case, the item viz. TV Front Cabinet is entirely made of plastics and embedding of 4 metal screws or inserts will not alter the character of the article which has been rightly held to be an article made of plastics. Hence, the judgment of the Hon'ble Supreme Court is distinguishable from the facts of this case. It is also relevant to note that the Central Board of Excise and Customs had clarified vide F. No. 93/125/86- CX-3, dated 26-12-1986 that plastic moulded luggage and other articles made of plastic having some metal parts would continue to be exempted as articles of plastics under Notification 182/82, dated 11-5-1982. Even

commercially the TV front cabinet is known as article made of plastic which fall under Tariff Item 15A(2) and exempted under Notification 68/71 prior to 28-2-1982 and exempted under Notification 149/82, dated 22-4-1982 during the period 1-03-1982 to 10-5-1982. Since the articles made of plastic became classifiable under Tariff Item 68 on amendment of Tariff Item 15A(2) by Finance Act, 1982 which covered under Tariff Item 15A(2) specific items like film, sheets, etc. they continue to enjoy benefit of exemption under Tariff Item 68 as was the case under Tariff Item 15A(2) prior to 11-5-1982. In the light of the above, we hold that the benefit of Notification 182/82, dated 11-5-1982 is available to the disputed item. Accordingly, we uphold the order of the lower appellate authority and reject the appeal. The CO abates.

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