

Collector of Central Excise Vs. Fibre Foils (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-16-1996

Reported in : (1996)(83)ELT463TriDel

Appellant : Collector of Central Excise

Respondent : Fibre Foils (P) Ltd.

Judgement :

1. By the present appeal, the appellant has assailed the order of Collector (Appeals). The Collector (Appeals) had held that the appeal in Tribunal was dismissed due to delay in filing of such appeal by Collector, Central Excise, Bangalore and that this authority cannot set aside the Order-in-Appeal No. 113/87-B as no such powers are invested in this authority. Accordingly, the application of the Assistant Collector cannot be entertained on merits and is dismissed as non-entertainable.

2. When the matter was called, Shri A.K. Madan, the learned SDR was present for the appellant whereas none was present for the respondents and the Bench proceeded to hear the appeal ex parte. At this stage, Shri V. Sridharan, the learned Counsel intervened to say that he had sent the Vakalatnama to the respondents and therefore, he may be allowed to argue on behalf of the respondents in the absence of Vakalatnama. He was not allowed to represent the respondents and we proceeded to hear the appeal.

3. The Collector, Central Excise, Bangalore has filed this appeal on the ground that composite containers on merits are classifiable under sub-heading No. 4818.13; that the Collector instead of deciding the issue on merits, incorrectly rejected the appeal. Shri A.K. Madan, the learned SDR submitted that the respondents herein are the manufacturers of composite containers from paper or paperboard and metal components; that they filed a classification list on 24-2-1986 seeking classification of these composite containers under sub-heading No.4818.90 of the Schedule to the Central Excise Tariff Act, 1985. On 7-3-1986, the assessee filed another classification list seeking classification under sub-heading No. 4818.19. However, the Department was of the view that these composite containers were classifiable under sub-heading No. 4818.13 of the Schedule. A show cause notice was issued to the respondents. The respondents herein agreed before the Asstt.

Collector that the composite containers would not be classifiable under sub-heading No. 4818.19. Since the sub-heading referred to 'other'. His submission, was that prior to introduction of new Tariff, these composite containers were classifiable under Tariff Item No. 68 of the First Schedule. The Id. SDR submitted that sub-heading No. 4818.12 only covers printed containers made wholly out of paper or paperboard.

Therefore, he submitted that composite containers would fall under Chapter sub-heading 4818.13 if they are printed. He submitted that printed composite containers would not fall under Heading 4818.19 as it is a residuary sub-heading.

4. Heard the submissions of the learned SDR and perused the records. We find that the competing entries are 4818.90 and 4818.19 as claimed by the respondents herein and 4818.13 as held by the appellant. For the sake of convenience, the three entries are reproduced below

heading	Description	of	Heading No.	Sub-goods
No.-----	-----		1	2
3-----	48.18 - Other articles of paper pulp, paper, paper board, cellulose wadding or webs of cellulose fibres,			

flattened or folded boxes and flattened or folded cartons), whether in assembled or unassembled We find that the words 'cartons, boxes, cases; and containers have not been defined in the Tariff. We observe that the relevant entries are only 4818.12, 4818.13 and 4818.19 because 4818.90 is a residuary entry in respect of toilet tissues, handkerchiefs and cleansing tissues of paper. Admittedly, the containers cannot fall under 4818.20. Chapter Heading 4818.90 is another residuary entry of Heading No. 48.18. We also observe that Chapter Heading 4818.12 is not applicable, to the goods before us inasmuch as only those items which are made wholly out of kraft liner or kraft paper or corrugated paper and paperboard and boards falling within sub-heading Nos. 4805.11, 4805.19, 4807.92 and 4811.10 shall be covered by this Chapter Heading. Therefore, only two entries remain for classification, they are 4818.13 as held by the Department and 4818.19 as claimed by the assesseees. We also observe that Chapter sub-heading No. 4818.13 is specific whereas 4818.90 is residuary. Examining the goods again, we find that the goods are composite containers. Now the pertinent question is whether Chapter sub-heading No. 4818.13 being a specific entry covers the goods in question. We find that this entry reads -Other printed cartons, boxes and cases. Now whether the containers will fall under this heading or not is to be examined further. We observe that the heading contains other printed cartons. The other point that is material for consideration is that the containers were printed. Containers no doubt, will come within the terms 'cartons, boxes and cases.' Since in the present case, the containers were printed therefore, they will fall under Chapter sub-heading 4818.13 because in the view of the fact the containers were printed. This Heading becomes a specific Heading rather than a residuary Heading. The Rules of Interpretation stipulate that a specific heading should be preferred to a residuary heading. Having regard to all facts and circumstances, we hold that the printed composite containers shall be classified under Chapter sub-heading 4818.13. In this view of the matter, we set aside the impugned order and allow the appeal.