

Collr. of C. Ex. Vs. Inter-ocianic Plastic

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-18-1996

Reported in : (1996)(88)ELT88TriDel

Appellant : Collr. of C. Ex.

Respondent : inter-ocianic Plastic

Judgement :

1. This appeal is directed against Order-in-Appeal No. SKM-195/89-BI, dated 20-2-1989 of Collector, Central Excise (Appeals). The issue that falls for determination is whether products known as 'sequins' made from PVC Films are eligible to exemption under Notification No. 53/88, dated 1-3-1988.

2. Arguing for the Revenue, Id. DR submits that sequins are classifiable under Chapter 3926.90 and there is no doubt on this issue.

He, however, [contends] that these items are not eligible to exemption under Rule No. 39 of Notification No. 53/88 since these goods are made from PVC Film and not from material falling under Heading No. 39.01 to 39.15 of CETA, 1985. A condition specified under [Heading] 26 of the Notification the PVC Film from which sequins are made are classifiable under Tariff Item 39.20 and, therefore, these items do not fall under any of the Heading from 39.01 to 39.15. No exemption is admissible. In support of his contention, he cites the case reported in 1995 (77) E.L.T. 474.

3. Arguing for the Respondents, the Id. Advocate submits that there is no dispute about the duty paid character of the base material, i.e., PVC resins from which films are made. These films are made from PVC Resins which are classifiable under Heading 3904.10 and the finished products, i.e., sequins, are made from PVC Films which in this case serve as an intermediate product for the manufacture of sequins. There is also no doubt about the duty paid character of PVC Resins and PVC Films. He also submits that in such cases exemption has been allowed by [C.B.E.C.] and in this connection, he refers to Trade Notice No.155/90, dated 19-9-1990 as appearing in 1995 (75) E.L.T.4. We have heard both sides. We find there is no doubt about the classification of the finished product which falls under Heading 3926.90. These products are admittedly made out of PVC Films and there is also no dispute about the duty paid character of PVC Films. PVC Films in turn are made from PVC resins. These resins are also admittedly duty paid. The fact which emerge is that finished product, i.e., sequins are made from a basic raw material PVC Resins which fall under Heading 39.04. In this view of the matter, the conditions of the Notification are fully [satisfied]. We find that this position has been clarified by the [C.B.E.C] vide their letter 93/13/87-CX 3, dated 25-6-1987. In this letter Board has clarified that so long as duty-paid bare films which have gone into manufacture of such lacquered/laminated/metallised plastic films can be proved to have been manufactured out of duty paid material under Heading Nos. 39.01 to 39.15, such lacquered/laminated/metallised films made from such duty paid bare plastic films can also be treated to have been manufactured out of duty paid plastic materials falling under Heading Nos. 39.01 to 39.15. We are also supported by the decision of the Tribunal rendered in the case reported in 1990 (50) E.L.T. 533. The Tribunal held that the emergence of an intermediate product, namely, the plastic sheet out of artificial resin, does not preclude the appellants from claiming the benefit of the exemption under the Notification No. 68/71, dated 29-5-1971.

5. The case cited by the Id. DR is distinguishable. In that case of *Rajas-than Spg. & Wvg. Mills Ltd. v. C.C.E.* reported in 1995 (77) E.L.T. 474, the case concerned classification of polypropylene spun yarn falling under the then Tariff Item 18E. The Hon'ble Apex Court held that exemption under Notification No. 332/77-C.E. is available to polypropylene spun yarn but not to blended spun yarn containing 52%

polypropylene and 48% viscose. The Court also held that the Notification was to be construed strictly. We are not able to persuade ourselves that this in any way helps the Revenue.

6. In view of what is mentioned hereinbefore, we reject the Revenue Appeal and uphold the impugned order.

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