Collector of C. Ex. Vs. Vijay Flexible Containers (P)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-10-1996

Reported in : (1996)(87)ELT744TriDel

Appellant : Collector of C. Ex.

Respondent : Vijay Flexible Containers (P)

Judgement :

1. This Revenue Appeal is directed against the order-in-appeal No.SKM-1739/89-B-II, dated 23-8-1989 of Collector of Central Excise (Appeals).

1.2. The issue for determination is eligibility or otherwise to exemption under Notification No. 140/86-CX of printed corrugated cartons/boxes manufactured out of corrugated paper and paperboard.

2. Arguing for the Revenue the ld. D.R. submits that the base material for manufacturing cartons is classifiable under heading 4805.30 as it was duplex board. Classification of cartons under 4818.12 claimed by the Respondents applies only to such cases where printed cartons and containers are made wholly out of paper or paperboard. Since the base material falls under 4805.30 the products cannot be considered to be classifiable under 4818.12 but have to be classified under 4818.13 as other printed cartons/boxes and therefore would not be eligible to exemption under Notification No. 140/86. He also submits that the Respondents have not proved that these corrugated boxes were made from paper and paperboard.

3. Arguing for the Respondents the ld. Advocate submits that what is relevant in this case is the material from which the boxes are made. In support of his contention he cites cases reported in 1995 (7) RLT 165 - C.C. v. Vijaya Packaging Industries and 1995 (8) RLT 928 (Tribunal) -Dhruvco Printers (P) Ltd. v. C.C, New Delhi.

4. We have heard both sides. The relevant question which we have to ask ourselves in this case is whether printed cartons are made wholly out of paper or paperboard. We cannot accept the claim of the Revenue that we have to go to the base material from which the intermediate product is made. What is relevant is the product from which the finished product is directly made. So long as printed cartons are made out of corrugated paper or paperboard they would merit classification under heading 4818.12 and be entitled to exemption provided under that entry.

In the grounds of appeal Revenue have mentioned that the material from which the goods are manufactured falls under Chapter heading 4805.30.

What we are concerned with here is not the raw material of the parentage but the raw material from which the impugned goods are made.

Assistant Collector himself, as can be seen from the relevant part of his order as extracted by Collector (Appeals), has recorded that the Respondents "argued that they corrugate Duplex Board falling under 4805.30 and after corrugation the Duplex Board ceases to fall under 4805.30 and comes under another Chapter heading namely 4808.10" and that "There is a lot of weight in the argument of the " He, however, holds against them on the ground that corrugation amounts to manufacture for which a separate Classification List should have been filed by the assessee. This, however, is not germane to determination of the issue under consideration.

5. Once it is admitted that Duplex Board is corrugated its legitimate parentage is only under Chapter 4808.10. It is from this corrugated board that corrugated cartons/boxes are made. Since Tariff heading 4818.12 mentions "printed cartons, Boxes, containers and cans made wholly out of paper and paperboard of heading

No. or sub-heading No.48.04,4805.11,4805.19,4807.91, 4807.92, 48.08 or 4811.10 as the case may be, "printed cartons/Boxes made out of corrugated boxes would be squarely covered under tariff heading 4812.12. In determining the classification of impugned goods in terms of heading 4812.12 we have to look at the material the impugned goods are made of and not the mother material from which the material is made of.

6. In the result, for the reasons mentioned hereinbefore, we reject the Revenue Appeal and uphold the impugned order.