IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/2824/2011-CU[DB]

(Arising out of Order-in-Appeal No. 202-CE/APPL/KNP/2011 dated 30/08/2011 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

Commissioner of Central Excise, Kanpur **Appellant**

Vs.

M/s GPL Poly files, **Respondent**

Appearance:

Shri Rajeev Ranjan, Additional Commissioner (AR) for Appellant
Shri K.K. Jain, Authorized Representative, for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 27/11/2018
Date of Decision : 27/11/2018

FINAL ORDER NO-**72717 / 2018**

Per: Archana Wadhwa

Being aggrieved with the order passed by Commissioner (Appeals), revenue has filed the present appeal.

2. After hearing the learned A.R. for revenue, we note that the dispute in the present appeal relates to classification of Polyster Staple Fibre obtained from PET scrap and waste bottles. Whereas the revenue has claimed

the classification under Chapter 55, the appellant's claim is under Chapter 39.

3. Commissioner (Appeals), while disposing of the appeal, has referred to precedent decision of the Tribunal in the same assessee's case reported as M/s GPL Polyfiles Ltd. 2005 (183) ELT 0027 (Tribunal) wherein while dealing with the identical dispute, the Tribunal has held the classification of the product under Chapter 39.

Surprisingly, while passing the review order, both the Commissioners, in the grounds of appeal, has observed that:-

> "Tribunal decision in case of M/s GPL Polyfils Ltd. [2005 (01) LCX 0110 Eq 2005 (183) ELT 0027 (Tribunal)] would be relevant to the particular facts as in the said case and hence cannot have binding precedents in other matters."

We note that the dispute is in respect of the same product manufactured by the same assessee and the two contending entries are also the same. In such a scenario, the observation of both the Commissioners that the decision of the Tribunal in the earlier case would be relevant to the facts available in that case only and cannot have binding precedent in other matters, cannot be appreciated. It is the same dispute in respect of the same products and same classification and the same assessee. Once the classification is settled between the assessee and the revenue, the proceedings cannot be continued independently in respect of each and every show cause notices, by way of separate proceedings. As such, we find no reasons to interfere in the impugned order of Commissioner (Appeals).

4. Accordingly, revenue's appeal is rejected.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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