CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 975 Of 2005

[Arising out of OIA No. 834/CE/CHD/04 dated 24.12.2004 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

CG & ST- Chandigarh : **Appellant (s)**
C.R. Building, Chandigarh Sector 17C

Vs

Nachiketa Paper Ltd. : **Respondent (s)**
Mubarikpur, derabassi Mohali Punjab

APPEARANCE:
Shri Rajeev Gupta, AR for the Appellant
Shri A. S. Gill, Advocate for the Respondent

CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

ORDER No. A/60079/2023

Date of Hearing:27.02.2023

Date of Decision:27.02.2023

Per : S. S. GARG

The present appeal filed by the Revenue is directed against the impugned order passed by the Ld. Commissioner (Appeals) whereby the Ld. Commissioner (Appeals) has allowed the appeal of the respondent.

2. Briefly stated the facts of the present case are that M/s Nachiketa Paper Ltd. [Unit No. 1] are engaged in the manufacture of writing and printing paper falling under Chapter 48 of the Central Excise Tariff Act, 1985.

3. During the course of Audit, the internal Audit party, Hqrs. Office Chandigarh observed that the respondent vide sale invoices No. 534 dated 20.02.2003 has cleared 10.102 MT of Newprint-in-reels under chapter sub-heading No. 4801.00 valued at Rs. 237397/- at nil rate of
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duty to "Akhand Jyoti Masik". In order to ascertain the type of publication titled "Akhand Jyoti Masik" publication issue of August 2003 was procured by the department and found that the "Akhand Jyoti" is a monthly publication, which is in bound form, containing mainly spiritual articles of Hindu religion and hence it does not qualify for the definition of 'Newsprint' as envisaged under Notification No. 23/98-CE dated 1.8.1998, inasmuch as it is neither a daily/weekly publication nor in unbound form. Moreover, the magazine does not contain printed matter consisting mainly of current news. Hence, the department came to the conclusion that the respondent has wrongly availed the benefit of Notification No. 23/98-CE dated 1.8.1998 without disclosing the material fact with intent to evade payment of central excise duty. As per the department, the respondent is liable to pay the duty @16% amounting to Rs. 39.035/- which was sought to be recoverable from them and for this purpose, a show cause notice was issued and after following due process, the Adjudicating Authority vide Order-in-original dated 04.10.2004 confirmed the demand alongwith interest and imposed equal amount of penalty and also held that 'Newsprint in Reel' is classifiable under Tariff heading No. 48.23, attracting duty @16%. Aggrieved by the said order, the respondent has filed appeal before the Ld. Commissioner (Appeals) which was allowed in favour of the respondent. Aggrieved by the order of the Ld. Commissioner (Appeals), the department has filed the present appeal.

3. Heard both the parties and perused the case records.

4. Ld. AR for the Revenue submits that the impugned order passed by the Ld. Commissioner (Appeals) is not sustainable in law as the same has not been passed in accordance with law. He further submitted that the item 'Newsprint-in-reels' in different from

'Newsprint-in reels or sheets' and the Ld. Commissioner (Appeals) has wrongly held that the goods are specifically and separately classifiable under chapter heading No. 4801.00. He also submits that the exemption notification has to be strictly construed. He also submits that the Ld. Commissioner has wrongly relied upon the decision of NEPA vs. CCE Indore reported as 2002 (149) ELT 0354. He further submits that the said decision is not applicable in the facts of the present case.

5. On the other hand, the Ld. Counsel appearing on behalf of the respondent reiterated the findings in the impugned order and submitted that the Ld. Commissioner (Appeals) has rightly classified the impugned goods under Chapter sub-heading 4801.00. He also submits that the Ld. Commissioner (Appeals) in the impugned order followed his own decision with regard to the respondent itself and classified the impugned goods under Chapter Heading No. 4801.00. He further submitted that the said decision of the Ld. Commissioner (Appeals) for the earlier period was challenged before the Tribunal and the Tribunal dismissed the appeal of the Revenue vide its order reported in 2009 (243) ELT 434 (Tri.-Del.). The Ld. Counsel also placed on record the decision of the Additional Commissioner in the case of respondent itself wherein the Ld. Additional Commissioner for the subsequent period, dropped the demand against the respondent and classified the impugned goods under sub-heading 4801.00.

5. After considering the submissions of both the parties and perusal of material on record, we find that the Revenue has challenged the decision of the Ld. Commissioner (Appeals) on the ground that the 'Newsprint' in question can be classified under chapter heading No. 4823.90 only rather than chapter heading No. 4801.00.

The other ground for challenging the decision of the Ld. Commissioner (Appeals) is that the earlier decision of the Ld. Commissioner (Appeals) giving the benefit of notification to the respondent is under challenge before this Tribunal. But both the grounds are not sustainable in law.

6. The earlier decision of the Ld. Commissioner (Appeals) whereby he classified the impugned items under sub heading No. 4801.00 was upheld by the Tribunal by dismissing the appeal of the Revenue as cited (supra).

7. Further, we note that for the subsequent period also the Additional Commissioner has given the benefit to the respondent of Notification No. 23/98-CE dated 1.8.1998. Since, the Revenue has not filed any appeal against the decision of the Tribunal cited (supra) whereby the benefit of the notification was extended to the respondent and keeping in view that for the subsequent period, the Additional Commissioner has also given the benefit of the said notification to the respondent, we find no merit in the appeal filed by the Revenue and the same is dismissed.

(Operative part of the order pronounced in the Court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.