TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2150/2006 - EX[DB] & E/378/07 Date 23/09/2008

Assistant Registrar
C.E.S.T.A.T. New Delhi

To
M/S MAGIC FASTENERS PVT.LTD.
57.5 M.GANDHRA ROAD ISMALIA ROHTAK

M/S MAGIC FASTENERS PVT.LTD. Appellant
Vs
C.C.E. ROHTAK Respondent

I am directed to transmit herewith a certified copy of **Final order No.**710-711/08-EX **EX[BR]** dated 17-9-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1 Respondent
C.C.E. ROHTAK
SCO NO.6 SECTOR 1. ROHTAK.
2. Adv. / Consult
MR.PRADEEP JAIN.ADVOCATE
34 GUJRAT VIHAR. VIKAS MARG. DELHI-92
3 C.D.R
4 ~~J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/2150/06 & E/378/07

[Arising out of Order-in-Appeal No.11/Comm/R.P/2006 dt.22.3.06 passed by the Commissioner of Central Excise, Rohtak)

For approval and signature:

Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER(TECHNICAL)

1. Whether Press Reporters may be allowed to see: the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

2. Whether it would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities: :

M/s. Magic Fasteners(P) Ltd. Appellant

Versus

CCE, Rohtak Respondent
Vice-a-versa

Appearance

Shri Pradeep Jain, Adv. For appellant
Shri V.Choudhary, Authorised Departmental Representative(DR) For respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of hearing: 14.8.08
Date of decision: 11.9.08

Final Order No. 710 - 711/08-Ex

Per Rakesh Kumar:

The point of dispute in these appeals is as to whether the Hook and Loop Tapes of Nylon and Polyester yarn being manufactured by M/s. Magic Fasteners (P)Ltd., Rohtak (hereinafter referred to as 'Magic Fasteners') are classifiable under sub-heading 5806.10 of Central Excise Tariff as "Narrow Woven Fabric other than the goods of heading No.5807" or the same are classifiable as "Snap Fasteners" under sub-heading 9606.90 of the tariff. The Commissioner vide the impugned order has held that -

(a) Hook & Loop Fastener tape is correctly classifiable under sub-heading 9606.90 of the tariff as "Snap fasteners" and not under sub-heading 5806.10 of the tariff as "Narrow Woven Fabric".

(b) Confirmed the duty demand amounting to Rs.3,65,999.91 for the period from Jan.04 to June'04 and duty demand of Rs.20,93,139/- for the period from July'04 to March'05 within the normal limitation periods and dropped the remaining duty demand as time barred;

(c) Dropped the demand for allegedly wrongly taken deemed credit amounting to Rs.41,71,132.60 as time barred ; and

(d) imposed penalty of Rs.one lakh on M/s. Magic Fasteners under Rule 25 of Central Excise Rules,2001 & 2002.

Against this order of the Commissioner while Magic Fasteners have filed appeal No.E/2150/06 challenging the Commissioner's order regarding classification of the goods, in question, the Revenue has filed review appeal No.E/378/07-Ex. on the ground that the Commissioner, while confirming the duty demand for the period from Jan'04 to March'05, has not ordered recovery of interest on duty at the applicable rate, as per the provisions of Section 11AB of Central Excise Act,1944. Both these appeals were heard together.

2 Heard both the sides.

2.1 Shri Pradeep Jain, Advocate, Ld. Counsel on behalf of Magic Fasteners(P) Ltd. pleaded that it is clear from the manufacturing process that the goods are made of woven fabric and since the goods satisfy the definition of Narrow Woven Fabric, as given in Chapter Note 6 to Chapter 58, the same are correctly classifiable under sub-heading 5806.10, that the Ld. Commissioner has erred in not appreciating the fact that both the hook, and the loop of the fasteners are made of nylon/polyester yarn and are woven fabric; that the Commissioner has not appreciated the fact that at the time of imposing Anti-dumping duty on this very product, the Govt. of India its order No.14/24/2003-DGAD dt.7.6.05 has clearly held that the classification of the said goods is under 5806.10 and not under heading 9606.90 and this fact cannot be ignored by the Commissioner; that the technical literature supports the case of the appellant, and that the Tribunal's order in the case of Zip Industries Ltd. vs

CCE, Chennai-III reported in 2001(133)ELT.591 wherein it was held that the zipper tapes are classifiable under heading 96.07 of the Tariff as parts of slide fasteners, is not applicable to the facts of this case, as in this case the product 'hook and loop fastener tapes' which is a woven product, is totally different from the zipper tape. It was also pleaded that snap fastener covered under heading 9606 is totally different product which consists of closure unit and attaching unit.

2.2 Shri V.Choudhary, the learned Departmental Representative, reiterating the views of the adjudicating authority in the impugned order pleaded that the product, in question, is known as 'Hook & loop fasteners' or Velcro tape' and is commonly used with shoes and garments as fastener, that the goods are nothing but press fasteners, that in view of Hon'ble Supreme Court's judgment in the case of Commissioner of central excise, Chennai-III ~~Customs~~ vs Zip Industries Ltd. reported in 2002(141)ELT.A.279(SC) upholding the Tribunal's order in the case of Zip Industries Ltd. vs CCE, Chennai-III(Supra), the 'Hook & loop fasteners' would be correctly classifiable under sub-heading 9606.90, that since heading 96.06 covers the goods more specifically, in terms of Rule 3(a) of the ~~Interpreting~~ Rules for interpretation of Central Excise Tariff, the goods, in question, would be correctly classifiable under 96.06 and that since even in trade parlance, the goods, in question, are known as fastener, the same would be correctly classifiable as 'press fastener' under sub-heading 9606.90.

3. We have carefully considered the rival submissions. The manufacturing process of the goods, in question, is as under:

Nylon or polyester yarn is woven into tapes on automatic weaving machines. The tapes are dyed and subjected to heat treatment. Thereafter the hook tapes are subjected to hook cutting and loop tapes are subjected to brushing. The tapes are thereafter passed through slitting machines where the selvedges are cut and tapes of different sizes are made.

3.1 These tapes are used to hold together two objects/surfaces. The point of dispute is as to whether these goods are 'narrow woven pile fabrics' classifiable under sub-heading 5806.10 or are 'snap or press fastener' classifiable under sub-heading 9606.90 of the tariff.

3.1.1 The competing entries for the goods, in question, are reproduced below:

"58.06	Narrow woven fabrics, other than goods of heading 58.07; narrow fabrics consisting of warp without weft assembled by means of an adhesive (Bolducs).
5806.10	Woven pile fabrics (including terry towelling and similar terry fabrics) and chenille fabrics".
"96.06	Buttons, press-fasteners, Snap Fasteners and press Studs, button moulds and other parts of these articles; Button blanks
9606.10	Button and button blanks
9606.90	Others".

As per chapter note 6 to chapter 58, for the purpose of heading 58.06, the expression "narrow woven fabric" means –

(a) Woven fabrics of a width not exceeding 30 cm, whether woven as such or cut from wider pieces, provided with selvedges(woven, gummed or otherwise made) on both edges;

(b) Tabular woven fabrics of flattened width not exceeding 30 cm and

(c) Bias binding with folded edges, of a width, when unfolded not exceeding 30 cm.

3.1.1. Selvedges are the edges on either side of a fabrics, often of different or heavier threads than that of the fabrics so finished as to prevent unraveling or ~~dtraying~~ fraying. The Commissioner, relying upon the statement dt.21.9.04 of Shri S.C.Jain, Director of Magic Fasteners and statement dt.26.8.04 of Shri Amit Jain, Authorised Signatory of Magic Fasteners, has concluded that edges on both the sides of Hook & loop tapes are cut and on this basis, relying upon Hon'ble Supreme Court's judgment in the case of CCE, Chennai-III vs Zip Industries Ltd.(supra), has held that the goods, in question, do not conform to the definition of 'narrow woven fabrics' as given in chapter note 6 to chapter 58 and hence the goods are not classifiable under sub-heading 5806.10. He dismissed the plea of Magic Fasteners at the time of hearing and in their reply dt.12.12.05 to the show cause notice that there was no cutting of selvedges and they were only separating the tapes by a slitting machine by cutting in the middle of the selvedges and that selvedges remained on both the sides of the tape, on the ground that this contention, at the stage of hearing is an afterthought and there is no explanation as to how the huge stock of selvedges has been generated. The Commissioner, after ruling out classification under sub-heading 5806.10, has ordered the classification of the goods as 'press-fastener' under 9606.90.

4. Whether or not the goods, in question, have selvedges on both the edges is a point of fact – something which could be easily verified. When the Appellants – Magic Fasteners in their reply to show cause notice and at the time of personal hearing have pleaded that their finished product – 'Hook and loop tapes' have selvedges on both the sides, this fact should have been got verified by drawing a sample and taking CRCL's opinion on this point, instead of relying upon the statements of the Director and authorized signatory of the Appellant company, which according to them, have been misinterpreted by the Revenue.

5. This Tribunal in the case of Zip Industries Ltd. vs Commissioner of Central Excise, Chennai-III(supra) has held that Rule 1 of the Rules for Interpretation of the Ist Schedule to the Central Excise Tariff Act,1985 provides that for legal purposes, classification shall be determined according to the terms of the heading and any relative Section or Chapter

notes, that chapter note 6 to chapter 58 of the tariff requires that for being classified under heading 58.06, the narrow woven fabrics should have selvedges on both the edges and that since the polyester tapes (zipper tapes) do not have selvedges on both the edges, they do not satisfy the requirement of chapter note 6 and hence the same cannot be classified under 58.06. This decision of the Tribunal has been upheld by the Hon'ble Supreme Court, vide its judgment reported in 2002(141)ELT.A-279. Therefore, the classification of the goods, in question, have to be decided on the basis of the wordings of the headings/sub-headings, read with the respective chapter or section notes. In this case, there is no dispute about the fact that the goods are woven fabrics. The point of dispute is whether or not the goods, in question, conform to the definition of 'narrow woven fabrics' as given in Chapter note 6 to Chapter 58. The Commissioner while ruling out the classification of the goods, in question, under 58.06 by applying the ratio of Hon'ble Supreme Court's judgment in the case of CCE, Chennai-III vs Zip Industries Ltd.(supra), has not given any finding as to whether the width of the fabrics(velcro tape) exceeds 30 cm and his finding that the tape does not have selvedges on both the edges is not based on any test report of CRCL, while the Appellants have claimed that the goods, in question, do have selvedges on both the edges. This is a point of fact which must be ascertained by drawing sample and obtaining CRCL's opinion in this regard.

6. We, therefore, set aside the impugned order and remand the matter for de-novo adjudication with the following directions:

(1) Samples from the finished goods shall be drawn and the opinion of the Central Revenue Central Laboratory shall be obtained on the point as to whether the goods, in question, conform to the definition of 'narrow woven fasteners' in terms of the parameters for the same prescribed in Chapter Note 6 to Chapter 58.

(2) The question of classification of the goods shall be decided after taking into account the CRCL's report and hearing the Appellants.

(3) It goes without saying that if the goods, in question, are held to be classifiable under some sub-heading other than 5806.10 and on this basis, some duty demand is confirmed, interest on duty at the applicable rate, as pointed out in the Revenue's appeal, shall also be chargeable.

7. The appeals of Magic Fasteners and of the Revenue against the impugned order stand disposed off as above.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

km