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

Appeal No. E/2407/2005 - EX[DB]   Date **26/06/2012**

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

To :
M/S KARAMCHAND APPLIANCES PVT. LTD.
2ND FLOOR, GREAT EATERN CENTRE, 70, NEHRU
PLACE, NEW DELHI
110013

M/S KARAMCHAND APPLIANCES PVT. LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.A/718 2012 EX|DB|** dated 25-6-12 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.SHEKHAR VYAS
P-13, SECTOR 12, NOIDA

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 15.6.2012
Date of pronouncement : 25·06·2012

Central Excise Appeal No.2407 of 2005

Arising out of the order in appeal No.351/CE/CHD/2004 dated 6.5.2004 passed by Commissioner of Central Excise (Appeals), Chandigarh.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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 Departmental authorities?	

Karamchand Appliances Pvt. Ltd. .. Appellant

Vs.

C.C.E.,Chandigarh .. Respondent

Present for the appellant : Shri shekhar Vyas, Advocate
Present for the respondent : Shri R.K.Verma, A.R.

FINAL Order No. A/718/2012-Ex(BR)

Per Justice Ajit Bharihoke:

This appeal is preferred by M/s Karamchand Appliances Pvt. Ltd. raised a classification issue.

2. The appellants are engaged in the manufacture of Allout Refill Bottles containing insecticides falling under Chapter Heading 3808.10 and they are also manufacturing Electro Thermic apparatus of a kind

used for domestic purposes falling under Chapter heading 8516 of the schedule to the Central Excise Tariff ACt, 1985.

3. The appellants have two units for manufacture of insecticide refill with electro thermic apparatus and cleared the goods manufactured by them in combination pack of apparatus and insecticides together known as 'All Out Combi Pack' which is sold in the market on MRP basis.

4. The appellant vide letter dated 22.1.2001 addressed to the Superintendent of Central Excise, Baddi informed the Department that they would clear the above mentioned combinationpack under heading 3808.10 wherein the abatement from MRP was 35% in terms of Notification No.9/2000-CE(NT) dated 1.3.2000. It was further stated in the letter that if the product was classified under heading 8516 then the appellant would be entitled to higher abatement of 40%.

5. After the intimation given to the Department, the appellant started clearing the combination pack on payment of duty under Chapter heading 3808.10 by taking abatement of 35% from MRP in terms of Notification No.9/2000-CE(NT).

6. The Department was of the view that the combination pack was essentially the electro thermic machine and not insecticides. Therefore, it fell under classification heading 8516. Accordingly, show cause notice dated 7.9.2001 proposing to re-classify the combination pack under chapter heading 8516 of Central Excise Tariff Act was issued to the appellant.

7. The appellant in their reply to the show cause notice contended that essential character of the combination pack cleared by the appellant is a mosquito repellant (insecticides), therefore, the combi pack in view of General Interpretation of the First Schedule to the

Central Excise Tariff Act, 1985 Rule 3(b) has been classified under Chapter heading 3808.10.

8. The Additional Commissioner, Central Excise vide order dated 3.4.2003 held that the classification pack was rightly classified by the appellant under chapter heading 3808.10 and dropped the proceedings under show cause notice.

9. The Department filed an appeal before Commissioner , Central Excise (Appeals),Chandigarh and the Commissioner (Appeals) reversed the order in original and held that combination pack would be classifiable under chapter heading 8516. The basic reason given by the Commissioner (Appeals) in the impugned order is that the main product in the common combipack is the apparatus and not the insecticides refill, therefore, the essential character of the combipack is to be determined by the machine and not by insecticides which is only an accessory to the machine.

10. Feeling aggrieved by the impugned order of Commissioner (Appeals) dated 6.5.2004, the assessee has preferred this appeal.

11. Before adverting to the submissions made by the respective parties, we may note the undisputed facts. It is not disputed that combipack comprises of insecticides refill falling under chapter heading 3808.10 and the electro thermic apparatus falling under chapter heading 8516. It is also not disputed that the appellants have been clearing combipack on MRP basis and paying excise duty under classification head 3808.10.

12. In the instant case, admittedly, the appellant had cleared the combipack comprising of Allout refill bottle containing insecticides falling under Chapter heading 3808.10 and the electro thermic apparatus used for domestic purpose falling under Chapter 85 of the Schedule to the Central Excise Tariff Act, 1985. Both the refill bottle of insecticides and the electro thermic apparatus are interdependent on

each other for functional use. Refill bottle without electro thermic apparatus is of no use as mosquito repellant and electro thermic is of no use without the bottle containing insecticides. Both the articles fall with different classification heading under different chapter headings of Central Excise Tariff Act, 1985. Thus that being the case, the question arises, what would be the right classification for combipack.

13. In order to find answer to the aforesaid question, it is necessary to have a look on the relevant General Rules for the Interpretation of this Schedule to the Central Excise Tariff Act, 1985 which is reproduced thus:

> " Classification of goods in this Schedule shall be governed by the following principles:
>
> 1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require , according to the following provisions:
> 2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished for falling to be classified as complete (or finished by virtue of this rule), presented unassembled or disassembled.
>
>   (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) the heading which provides the most specific description shall be preferred to headings providing more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials made up or different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit classification. "

14. On reading of the above Rule 3 of interpretation, it is clear that since combipack comprises of two different articles classifiable under different chapters and sub-heading of the Central Excise Act, 1985, the classification of combipack would be governed by Rule 3(b) of the above quoted Rule. Rule 3(b) of above quoted Rule provides that in such a case, the goods put up in sets for retail sale shall be classified as if they consisted of material or component which give them essential character in so far as that criterion is applicable.

15. Now the question arises, which of the two components, i.e. electro thermic apparatus or refill bottle of pesticides gives essential character to the combination pack. To find answer to this question, it would be essential to look at the combination pack from the buyer's perspective i.e. what would motivate the customer to buy combipack containing the apparatus and refill bottle. Whether the buyer would

be prompted to buy combination pack with a view to purchase the electro thermic apparatus or with a view to buy refill bottle of pesticides? In our considered view, a prospective buyer would purchase such combination pack for using it as mosquito repellant, which purpose is achieved by vaporizing the liquid pesticide by subjecting it to heat with the aid of electro thermic apparatus. This imply that electro thermic apparatus is merely a delivery machine but the real mosquito repellant is liquid pesticides contained in refill bottle. Thus, we find that the liquid pesticides bottle in the combination pack gives essential character of mosquito repellant to the combination pack. Thus, in our view, the right classification for the combipack would be under chapter heading 3808.10 which relates to insecticides etc. and not under chapter heading 8516 relating to electric heating apparatus.

16. In view of the above, we find it difficult to sustain the impugned order of Commissioner (Appeals) classifying the combipack under Chapter 8516. Thus the appeal is accepted and the impugned order is set aside with the observation that combipack would fall within classification 3808.10 of Schedule to the Central Excise Tariff Act, 1985. Appeal is disposed of.

(Pronounced in open Court on 25/6/2012)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/