IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 25/07/2017.
DATE OF DECISION : 25/07/2017.

Customs Appeal No. 631 of 2010

[Arising out of the Order-in-Appeal No. 441 (DKV)/CE/JPR-I/ 2010 dated 21/09/2010 passed by The Commissioner (Appeals), Central Excise – I, Jaipur.]

M/s Paramount Communication Ltd. Appellant

Versus

CCE, Jaipur Respondent

Appearance

Ms. Rinki Arora, Advocate – for the appellant.

Shri Govind Dixit, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 55522/2017 Dated : 25/07/2017

Per. B. Ravichandran :-

The appeal is against order dated 21/09/2010 of Commissioner (Appeals), Jaipur. The appellants are engaged in the manufacture of optical fiber cable and had imported raw material availing concessional rate of duty in terms of Notification 24/2005-CUS dated 01/03/2005. The dispute in the present appeal relates to the classification of the product manufactured by the appellant. The appellants claimed that the product manufactured by them are classifiable under Tariff Heading 85447090 but the Revenue held that the product is classifiable under 90011000. The case was adjudicated by the Original Authority upholding the contention of the Revenue and denying the concession claimed by the appellant on the imported raw material. On appeal, vide the impugned order, the Commissioner (Appeals) upheld the original order.

2. The learned Counsel for the appellant submitted that they have not been provided the copy of the test report from Telecommunication Engineering Centre, DoT, Government of India, New Delhi and they have strongly contested the said finding and requested for a re-test by approved CRC Laboratory. Neither the copy of report was given nor the request for re-test was considered by the lower authorities. The copy of statement of Shri Ravi Gupta was also not made available to them. The impugned order held that the appellant failed to establish that their product is individually sheathed optical fibre cable based on sale invoices, copies of contract etc. The learned Counsel for the appellant submitted that all their documents including sale invoices have been resumed by the officers during the enquiry itself. The lower authority could have verified these documents, for an opinion.

3. The learned AR submitted that the test has been conducted by approved centre, who are competent to examine the nature of product. The lower authorities have examined all the relevant issues before concluding the classification of the product and denying the exemption to the raw material as the final product did not fall under Chapter 85. The learned AR also submitted that the appellant claimed their product is same as that of M/s Aksh Optical Fibre Limited, which was subject matter of decision by the coordinate bench. He submitted that the classification as followed for M/s Aksh Optic Fibre Limited can be adopted for the appellant also. It was also held that the Telecommunication Engineering Centre is competent to test the report.

4. We have heard both the sides and perused the appeal records. Admittedly, the lower authorities heavily relied on the test report given by the Telecommunication Engineering Centre, DoT, New Delhi. However, a copy of the said report was not made available to the appellant. Further, the appellants strongly contested the findings and sought a re-test by approved CRC lab. The same was declined. No reasons was recorded except to state that the test has been conducted by a competent lab. Further, the onus was put on the appellant to establish that the product was individually sheathed optical fibre cable. We find force in the claim of the appellant to the effect that all the sale documents were resumed by the Revenue and they could have verified the said documents for the nature of product. We also note that the appellants had a right for re-test in case of dispute. Considering

the above position, we find that the classification as concluded by the impugned order requires re-examination and accordingly we set aside the impugned order and remand the matter to the Original Authority for a fresh decision. The possibility of re-test based on duplicate sample, if available, should be explored. In case of non-availability of duplicable sample or the product in question is now not available for re-test the Original Authority should examine the documentary and other evidences to form a opinion on classification. The test memo alongwith the report of test relied upon by the Revenue should be made available to the appellant. Adequate opportunity shall be granted to the appellant before a fresh decision is taken. The appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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