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

Date of Hearing/Order: 10.8.2018

Appeal No. E/ 51383/2017-DB

(Arising out of Order-in-Original No. JAI-EXCUS-000-COM-04-17-18 dated 17.5.2017 passed by the Commissioner, Central Excise, Jaipur)

M/s Shuban Prints — Appellant

Vs.

CCE & ST, Jaipur-I — Respondent

Appearance

Shri B.L. Narasimhan, Advocate - for the appellant
Shri Karthi Kiyan, Advocate

Shri M.R. Sharma, D.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No. 52859/2018

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein duty has been demanded on the basis of classification of the product along with interest and penalty was also imposed by invoking the extended period of limitation.

2. The facts of the case are that the appellant is engaged in the manufacture of mono cartons and classifying the same under CETH 48192020 till Sept. 2011. Thereafter, the appellant changed the classification to CETH No. 48173090 of Central Excise Tariff Act,

1985. On the basis of said change in classification, investigation was conducted and thereafter a show cause notice was issued on 2.1.2017 to classify the product under CETH No. 48192020 of the Tariff Act by invoking extended period of limitation. The matter was adjudicated and by invoking the extended period of limitation, the demand for the period October 2011 to Sept. 2016 was confirmed along with interest and penalty was imposed on the appellant. Against the said order, the appellant is before us.

3. The ld. Counsel for the appellant submits that it is a fact on record that the change of classification was in the knowledge of the department since 2011 when they wrote a letter through the jurisdictional Range Officer on 1.11.2011 for change of classification. Therefore, the demand for the extended period of limitation is not sustainable. Consequently, no penalty is imposable on the appellant. He also submits that it is an issue of classification of the product as per the understanding of the appellant. Therefore, no mala fides can be attributable against the appellant for non-payment of duty.

4. On merits, it is the submission that as per the Tariff Heading No. 48173090, it is their understanding that they are manufacturing boxes and these boxes has not relevance with containing assortment of paper stationery therefore, the merit classification of their goods is CETH 48173090. It is the submission that the Sr. N0. 48192020 also for classification for boxes but that is not applicable to their case. In alternate, he submits that although the goods in question

may be containing entry at two places. In that circumstances, benefit of doubt be given to the appellant. Therefore, he prayed that impugned order is to be set aside. He also submits that if it is held that the impugned goods merit classification under CETH 48192020. In that case, the appellant is entitled to avail Cenvat credit of input and input services and if the same is granted, the appellant is ready to pay duty along with interest.

5. On the other hand, ld. AR supported the impugned order.

6. On the basis of the arguments advanced before us, we find that it is a case of classification of the goods viz. boxes manufactured by the appellant. The appellant wants to classify the said goods under Chapter Heading No. 48173090 where as Revenue wants to classify the same under Chapter Heading 48192020.

7. For better appreciation the Tariff Entry is reproduced herein:

4817	**Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing and assortment of paper stationery**
481710 00	Envelopes.....................................
4817 20 00	Letter cards, plain postcards and correspondence cards.........................
4817 30	*Boxes, pouches, wallets and writing compendiums of paper or paperboard, containing an assortment of paper stationery;*
4817 30 10	Writing blocks.............................

4817 30 90	Other..

4819	**Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like**
4819 10	*Cartons, boxes and cases, of corrugated paper or paperboard.*
4819 10 00	Boxes................................
4819 10 90	Other...............................
4819 20	*Folding cartons, boxes and cases, of non-corrugated paper and paperboard.*
4819 20 10	Cartons, boxes, cases, intended for the packing of match sticks...............................
4819 20 20	Boxes.....................................
4819 20 90	Other...............................

8. The HSN also does not through light for proper classification of the goods but on going through the Chapter entries, we find that the appellant are manufacturing boxes and for boxes, the Entry No. 48192020 is for boxes, therefore, the entry which is more specific, the goods are to be classified in that entry. In that circumstances, we hold the merit classification on the impugned goods is under Chapter Heading of 48192020 of Central Excise Tariff Act, 1985.

9. As in this case on 1.11.2011, the appellant wrote a letter to the department for change of their classification and also filed ER-1 return accordingly. As the said fact was in the knowledge of the department since 2011, therefore, the show cause notice issued to the appellant on 2.1.2017 is barred by limitation.

10. In these circumstances, we hold that for the period within limitation the appellant is liable to pay duty along with interest. As the action of the appellant was in the knowledge of the department itself, therefore, in this case, no penalty is imposable on the appellant. We further hold that as the appellant is liable to pay duty and have not availed Cenvat credit on input and input services, for the period for which demand has been confirmed, the appellant is entitled to avail Cenvat credit on input and input services.

11. In these terms, we dispose of the appeal.

(Dictated & pronounced in open Court)

(Bijay Kumar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

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