IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No.509 of 2009

(Arising out of Order-in-Original No.17-18/Commr/CE/Kol-III/2009-10 dated 25.05.2009 passed by Commissioner of Central Excise, Kolkata)

Commissioner of Central Excise, Kolkata III
180, Shantipally, Rajdanga Main Road, Kolkata-700107.

Appellant

VERSUS

M/s Studio Print Art
Gopalpur House, P.O.R. Gopalpur, Kolkata-700136

Respondent

APPERANCE :

Shri A.Roy, Authorized Representative for the Appellant
None for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75523/2023

DATE OF HEARING : 30 .05.2023
DATE OF DECISION : 30 .05.2023

Per Ashok Jindal :

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the respondent manufactured the printed graphics with pictures, printed plastic and PVC sheets, printed graphics, injected graphics, screen graphics with printed pictures, printed on plastic films with logo design brand etc. and cleared the same at Nil rate of duty and classifying the same under Chapter Heading 4901 of Central Excise Tariff Act, 1985.

2.1 The Revenue alleged that the said products do not match with the description under Chapter Sub-heading 4901.90 and has rightly classifiable under Chapter Sub-heading 9405.90 attracting Central Excise duty @ 16% upto March 2001 as "Sheet for glow sign, Sticker glow sign on payment of duty.

2.2 Therefore, a show-cause notice was issued to demand duty from the respondent.

2.3 The show-cause notice was adjudicated and proceedings were dropped against the respondent.

2.4 Against the said order, the Revenue is before us.

3. The ld.A.R. for the Revenue, reiterated the grounds of appeal and submits that prior to the period in question, the respondent used to classify their product under Chapter Sub-heading 9405.90 and cleared the goods on payment of duty. Now, he has changed the classification. Therefore, the impugned order is to be set aside and the respondents are liable to pay duty as per earlier classification.

4. Heard the ld.A.R. for the Revenue and perused the records.

5. In the impugned order, the adjudicating authority has examined the issue on classification and has observed as under :

> *"I have examined farther the written note submitted by the noticee at the time of personal hearing on 06.05.2009. I have also verified the five invoices where discrepancy was reported by the jurisdictional Range and found that the quantity shown in the invoices do not tally with the figures submitted by M/s Vodafone and therefore, not acceptable. In other two cases of verification the classification dispute were not observed or reported. In the two Show Cause Notices also, no proof were shown regarding classification of all the manufactured items by the noticee during the relevant period would fall under Chapter 94 of CETA,85.*

The noticee in their various submissions stated that they have been manufacturing both items of Chapter 49 and Chapter 94. During the period in question they availed S.S.I. exemption under notification Nos. 8/2001 dated 01.03.2001 and 8/2002 dated 01.03.2002 as their clearance value for the Chapter-94 were fully exempted and the value of sales of such products were not to be added to the aggregate value of clearance for the purpose of availing S.S.I. exemption. During personal hearing on 29.01.2009 they submitted copy of statement of their sales during 2001-02 and 2002-03 before the department. The same was sent to the jurisdictional Assistant Commissioner for necessary verification. The report received from the jurisdictional Assistant Commissioner of C.E. shows that the value of clearance for the products of Chapter-94 for 2001-02 is Rs.81,40,341.25 and during 2002-03 is Rs.66,69,264.25 and obviously below Rs.1.00 Crore.

I find that the "Products of Printing Industry" excepting the glow sign items would properly be classifiable under Chapter sub-heading No. 4901.90 in terms of Note 2 of Section VII of CET and also in terms of Note 2 of Chapter 49 of Central Excise Tariff. The Tariff rate was 'Nil' during 2001-02 and 2002-03, for the products under Chapter sub-heading No. 4901.90. Therefore, the printing of 'logo' and 'designs' on plastics by the noticee (excepting the Glow sign products) will appropriately fall under Chapter sub-heading No. 4901.90. Collector of Central Excise reported in 1991 (52) ELT 392 (Tri.). The department also did not come up with any sort of proof regarding classification of such product under Chapter 94 in the notices and it cannot also be proved on subsequent verification.

The tariff rate of the goods under Chapter sub-heading No. 4901.90 during the relevant period was 'Nil' and as such the value of clearance of such products cannot be added to the aggregate value of clearance for the purpose of exemption under S.S.I.

Exemption notification Nos. 8/2001 dated 01.03.2001 and 8/2002 dated 01.03.2002. Therefore the demand in the two notices fails on merit."

The Adjudicating Authority has also held that the correct classification is 4901.90. The Revenue has not disputed the fact that the observations made by the Adjudicating Authority, are not correct and the product is not classifiable under Chapter Sub-heading No.4901.90.

6. In that circumstances, the appeal field by the Revenue, deserves no merit. Accordingly, the same is dismissed by upholding the impugned order.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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