(2008) 04 SC CK 0137

In the Supreme Court Of India

Case No : Civil Appeal No. 7634 of 2002

Commissioner of Central Excise, Aurangabad — APPELLANT

Vs

Caprihans India Ltd. — RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Citation : (2008) 129 ECC 113 : (2008) 155 ECR 113

Hon'ble Judges : Dalveer Bhandari, J;Ashok Bhan, J

Bench : Division Bench

Advocate : V. Shekhar, Abhigya, for P. Parmeswaran, for the Appellant; Joseph Vellapally U.A. Rana and Abhishek Rao for Gagrat and Co. in CA 7634/02, A. N. Haksar U.A. Rana and Abhishek Rao for Gagrat and Co. in CA 4494-95/02, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan and Dalveer Bhandari, JJ.—The question which fell for consideration before the Customs, Excise & Gold (Control) Appellate Tribunal (for short, "the Tribunal") was whether the benefit of exemption as per Entry 57 of the table to Notification No. 4/97 dated, 01st March 1997 was available to the Respondent in respect of the product, viz., "SUNPAC" being manufactured by it. As per the said entry goods classifiable under heading 39.23, 39.24 and 39.26 of the schedule to the Central Excise Tariff Act other than the goods of polyurethane, insulated ware, bags or sacks made out of fabrics woven from strips or tapes of plastic and fabrics for making bags or sacks, were fully exempt from payment of duty.

2. The Respondent claimed classification of the said product under sub-heading 3926.90 of Chapter 39. A show cause notice was issued to the Respondent demanding duty on the ground that the said product is classifiable under Chapter Heading 3920.39 as a sheet of plastic. Respondent filed its reply. Relying on a decision of the Tribunal in Appeal No. 2597 of 1985 holding that it was not a sheet, the Assistant Commissioner dropped the demand. However, the Commissioner Appeals) allowed the appeal filed by the Revenue holding that the

aforementioned decision of the Tribunal would not apply and the said product would be classifiable under Chapter Heading 39.20 and hence not entitled to exemption.

3. On an appeal filed by the Respondent, the Tribunal came to the onclusion that the product manufactured by the Respondent would not be lassifiable either under Chapter Heading 3926.90 or 3920.39 but the ame would fall under Heading 39.16. In view of this, the Tribunal oncluded that the Respondent would not be entitled to the benefit of exemption under entry 57 of the table to the impugned notification since that entry does not include Articles of Heading 39.16.

4. We agree with the view taken by the Tribunal that the aforesaid entry of the impugned notification does not entitle the Respondent to claim exemption.

5. This controversy does not remain alive any longer as it is brought to our notice that the exemption has already been removed and same amount of duty has been made applicable under Chapter Heading 3926, 3920 and 3916.

6. The appeals are dismissed leaving the parties to bear their own costs.

