
(2011) 09 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No's. 4462 and 9736 of 2003

Commnr. of Central Excise, Noida

APPELLANT

Vs

Kitply Industries Ltd.

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Central Excise Tariff Rules — Rule 173B, 3

Citation : (2011) 187 ECR 255 : (2011) 10 SCALE 118 : (2011) 5 UJ 3259

Hon'ble Judges : Mukundakam Sharma, J;Anil R. Dave, J

Bench : Division Bench

Advocate : P.P. Malhotra, ASG, Harish Chander Sunita Rani Singh, Krishna Kumar, Kiran Bharadwaj and B. Krishna Prasad, V. Lakshmi Kumaran, Alok Yadav and M.P. Devanath, for the Respondent

Final Decision : Allowed

Judgement

Anil R. Dave, J.—The present appeals arise out of the judgments and orders passed on 23.9.2002 and 6.6.2003 by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi and the Customs, Excise & Service Tax Appellate Tribunal, dismissing the appeals filed by the Appellant- Revenue epartment. By this judgment, we dispose of Civil Appeal Nos. 4462/2003 and 9736/2003 as they involve similar questions of law.

2 The issue which falls for consideration in the present appeals is whether laminated panels of particle and medium density fiber board should be classified under sub- heading No. 4406.90 and 4407.90 or under sub-heading No. 4408.90. The Appellant alleged that the product manufactured by the Respondent herein was classifiable under sub heading 4408.90. For this purpose the Appellant relied on Chapter Note 5 of Chapter 44 of the Central Excise Tariff Act, 1985 (hereinafter referred to as 'the Act') which reads as under:

For the purposes of heading No. 44.08, the expression "similar laminated wood" includes blockboard, laminboard and battenboard, in which the core is thick and

composed of blocks, laths or battens of wood glued or otherwise joined together and surfaced with the outer plies and also panels in which the wooden core is replaced by other materials such as a layer or layers of particle board, fiberboard, wood waste glued or otherwise joined together, asbestos or cork.

For the sake of convenience, the relevant headings are also extracted below:

44.06 - Particle board and similar board of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances.

4406.10- Plain particle boards.

4406.20- Insulation board and hardboard

4406.30- Veneered particle board, not having decorative veneers on any face

4406.90-Other.

44.07 - Fiber board of wood or other ligneous materials, whether or not bonded with resins or other organic substances.

4407.10-Insulation board and hardboard

4407.90- Other.

44.08-Pplywood, veneered panels and similar laminated wood.

4408.10 - Marine plywood and aircraft plywood.

4408.30- Decorative plywood

4408.40- Cuttings and trimmings of plywood of width not exceeding 5 centimeters

4408.90 - Other.

3. In order to decide the issue arising in the present case in its proper perspective, basic facts leading to filing of the present appeals are being recapitulated hereunder:

The Respondent assessee, who is engaged in the manufacture of wood and articles of wood falling under Chapter 44, was issued show cause notices dated 16.2.2000 and 27.12.2000 by the Appellant authorities, inter alia, calling upon it to show cause as to why classification of its products (1) Laminated Particle Board and (2) Laminated Medium Density Fibre Board should not be changed to chapter Sub-heading No. 4408.90 The Respondent replied to the said notices refuting the allegations on merits as well as on limitation. The said show cause notices were adjudicated and the demand proposed therein was dropped by the Commissioner of Central Excise, Meerut-II vide Orders dated 20.4.2001 and 31.10.2001 respectively. The Commissioner, ultimately found that the pre requisites of Chapter Note 5 of Chapter 44 were not satisfied and, therefore, No. further action was taken so far as the aforestated classification was concerned.

4. Aggrieved by the orders, the Revenue filed appeals before the Tribunal. The Tribunal dismissed the said appeals vide orders dated 23.9.2002 and 6.6.2003, upholding the findings of the Commissioner.

5. Aggrieved by the orders of the Tribunal, the Reveue has filed the present appeals.

6. The learned Counsel for the Appellant submitted that the Tribunal had erred in not appreciating that the manufacturing process, as stated by the factory manager clarified that "pre-laminated" meant already laminated and as a result of the process, the surface of the panels become water resistant as well as scratch resistant and due to melamine surface, it resisted cigarette burns and also got an attractive look. In spite of the above facts stated by the factory manager with regard to the process, the Respondent-Assessee never mentioned the word "Panel" in the manufacturing process submitted along with classification declared under Rule 173B of the Act.

7. Learned Counsel for the Appellant further argued that Chapter Note 44.08 specifically speaks of plywood, veneered panels and 'similar laminated wood'. He pointed out that in the instant case, it is an admitted fact that the goods in question, which are 'wood products' are laminated and they are covered under chapter heading 44.08 and not under chapter heading 44.06 as there is No. mention of lamination in the latter chapter sub heading.

8. The learned Counsel for the Appellant also submitted that the Tribunal failed to appreciate that if a product is capable of being classified under two chapter headings, then Rule 3(c) of the Rules for interpretation of the Act envisages that classification under the heading, which occurs last in the numerical order. Therefore, chapter sub-heading 4408.90 would be the appropriate sub heading for classification of the products in question.

9. To substantiate his claim, he relied on the cases of Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd., , 1985 ECR 2477 , Decorative Laminates (India) Pvt. Ltd. Vs. Collector of Central Excise, Bangalore, .

10. On the other hand, the learned Counsel for the Respondent submitted that for Chapter Note 5 of Chapter 44 to apply, an essential pre-requisite is that the similar laminated wood must be surfaced with outer piles, which is conspicuously absent in the present case and hence the said chapter note would not apply. He also submitted that the impregnation is only an additional process, which is done on the particle board to increase its strength and, therefore, the goods would still continue to fall under heading 4406.

11. The learned Counsel also submitted that the decision in the case of Wood Craft Products Ltd. (supra) would not be applicable to the instant case as it was with respect to classification of block board. The Respondent relied on the case of CCE, Indore v. Bombay Burmah Trading Corpn. Ltd. 2000 (39) RLT 184 to substantiate its claim that prelaminated particle board is classifiable under

heading 44.06 and not under heading 44.08.

12. We have heard the learned Counsel for the parties and perused the records.

13. It is not in dispute that the product before the lamination is not classifiable under tariff heading 44.08. However, it is the case of the Appellant that after the lamination, the panels so obtained become a distinct product falling outside the purview of 44.06. Hence, what needs to be determined by us is whether even after the lamination, the products falls under sub-heading 4406.90 and 4407.90 or would it fall under sub- heading 4408.90.

14. For this purpose, it is important to refer to the statement of the factory manager Shri B.V Rao, who stated that in the process of manufacture of the panels, plain panels of the mother boards (plain particle/MDF fiber) are used. Papers are passed through the impregnating unit wherein the resin and other required chemicals are spread on the paper and the paper gets impregnated. The impregnated paper is further dried and cut into required length. These paper sheets are assembled with the mother boards in such a way that the impregnated paper is placed on the upper side and one layer of impregnated design paper is placed over one layer of impregnated tissue paper. This assembly is put for pressing under the required heat and pressure. The above assembly is taken out as pre-laminated boards and is ready for dispatch.

15. From the above process, it is clear that the products are pre-laminated wood, most aptly falling under chapter heading 44.08 as the said chapter heading specifically speaks of plywood, veneered panels and similar laminated wood. The word "similar" discussed in the above para has been discussed by this Court in the case of CCE, Shilling v. M/S Wood Craft Products Ltd. (supra) wherein a similar issue with regard to "Block board" had arisen. For sound reasons recorded, this Court held that 'Block board' should be classified under heading No. 44.08. The logic applied in the case of 'Block board' can very well be applied in the instant case. In the said judgment, this Court observed as under in paras 5 and 6

5. It is significant that Heading No. 44.12 of the HSN is the same as Heading No. 44.08 of the Indian tariff and reads "Plywood, veneered panels and similar laminated wood." The explanatory notes on the HSN indicate the meaning of the expression "similar laminated wood" as under:

similar laminated wood. This group can be divided into two categories:

Block board, lamin board and batten board, in which the core is thick and composed of blocks, laths or battens of wood glued together and surfaced with the outer plies. Panels of this kind are very rigid and strong and can be used without framing or backing.

6. It is clear that if the expression "similar laminated wood" in the Indian Tariff is understood as it meant under the HSN on which pattern the Central Excise Tariff Act is based, then block boards of all kinds would fall within the expression

"similar laminated wood". This is how the amended Chapter Note reads expressly. The question is whether it can be so read even for the earlier periods particularly the first period before amendment of Chapter Note 5 to expressly include block board in the expression "similar laminated wood".

16. Heading 44.08 in the instant case covers "plywood", "veneered panels" together with all kinds of "similar laminated wood". In other words, it is treating "plywood" or "veneered panels" as "laminated wood". Therefore, it covers all kinds of laminated wood bearing any resemblance to "plywood" or "veneered panels". The word used is "similar" and not "same". Thus, some resemblance to "plywood" or "veneered panels" is enough, provided the article can be treated as "laminated wood". The sweep of the heading is, therefore, quite wide.

17. Therefore, for the product to be classified under the above heading, it is enough if it is similar to laminated wood, which in the instant case is proved beyond reasonable doubt. Even factory manager, Shri B.V. Rao admitted the facts with regard to lamination. At this point we may again refer to the case of M/s. Wood Craft Products Ltd. (supra). It has been mentioned therein that "The meaning of the significant words and description of the wood products as intermediate materials meant for manufacture of final products clearly indicate that "laminated wood" means a wood product prepared by placing layer on layer and "block board" is a plywood board with a core of wood. Any plywood board with a core of wood in which there are layers, one above the other is, therefore, laminated wood similar to plywood or, veneered panels. It is "similar laminated wood" included in the heading "Plywood, veneered panels and similar laminated wood". Similarity with, and not identity with plywood or veneered panels is required.

18. From the above, it is clear that the product is similar to plywood and veneered panels and hence tariff heading 44.08 is squarely applicable. Further, in the instant case, the core layer is made up of the particle board or MDF board (referred to as "mother boards" in the process mentioned above) and joined together with the help of resins and then laminated with plasticised paper (paper impregnated with melamine formaldehyde resin). Hence it is also clearly seen that the laminated panels manufactured by the Respondent are covered under Chapter Note 5 to Chapter 44 of the schedule to the Act. The product need not be same as plywood or veneered panels but mere similarity with them is enough for chapter note 5 to apply.

19. The Tribunal has erred in holding that as "particle board" is specifically covered under heading 44.06, laminated particle board will come under the scope of "similar board of wood" under the said heading. It is clear that the product after the lamination is a distinct marketable commodity different from the original one. This conclusion is further substantiated by the fact that Shri B.V. Rao said in his statement that the panels after lamination, become water resistant and look attractive due to printed paper and brings about a change in the name, usage etc. Therefore, the Tribunal's conclusion that the laminated

board is similar to 'particle board' is incorrect and cannot be accepted.

20. The Respondent has placed reliance on the *pari materia* heading in the HSN 44.10 to contend that the product is classifiable under chapter heading 44.06. We cannot accept this argument. In the proviso to the said heading, it has been mentioned that if the manufacturing process gives the product the essential character of articles of another heading, then chapter heading 44.12 will not apply. In the instant case, going by the statement of the Respondent's own officer, the product after lamination assumes a distinct marketability and brings about a change in the product. This change, after lamination makes the product fall outside the purview of chapter heading 44.06 and that would place the product under chapter heading 44.08 as the word used under chapter heading 44.08 is "similar laminated wood" (emphasis supplied). Further recourse may also be taken to Rule 3(c) of the Rules for interpretation of the Act which envisages that if the products are capable of classification under two chapter headings, then as per the said rule, the classification must be under the heading which occurs last in the numerical order. Therefore, heading 4408.90 would be the appropriate sub heading for classification of the product in question.

21. In terms of the above conclusions arrived at and on appreciation of the materials on record, we are of the view that the findings arrived at by the Tribunal are unjustified and cannot be accepted. The impugned judgments and orders passed by the Tribunal in both the appeals are, therefore, set aside and it would be open to the Appellant to assess the Respondent as per the above findings. Accordingly, the appeals are allowed but leaving the parties to bear their own costs.