(2021) 11 CESTAT CK 0089

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 396, 397 Of 2012

Stovec Industries Ltd APPELLANT

Vs

C.C.E.-Ahmedabad-I RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Citation : (2021) 11 CESTAT CK 0089

Hon'ble Judges : Ashok Jindal, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant has filed these appeals against the impugned orders wherein benefit of notification no. 06/2011-CE was denied to them.

2. The facts of the case are that the appellant is engaged in the manufacturing of various kinds of machinery and parts thereof availing Cenvat credit

on inputs and input services and paying duty at the time of clearance of final product. The appellant is a manufacturer of nickel perforated rotary

screen classifying the same under chapter heading 84405031 and paying Central Excise duty on their clearances before 01.03.2011. On 01.03.2011

notification no. 06/2011-CE was introduced and as per the said notification the appellants sought the benefit thereof and started paying concessional

rate of duty at the rate of 5%. The same was reflected in their monthly returns. It was sought from the appellant how their product falls under the

category at Sno. 57 of the notification no. 02/2011-CE dated 01.03.2011. It was answered that the appellant is entitled for the benefit of said

notification at List no. 2. Sr. no. 41 of the notification no. 06/2011 for the product manufactured by them. Thereafter, two show cause notices were issued to the appellant to deny the benefit of said notification for the period March 2011-September 2011 to deny the benefit of the notification which

permits concessional rate of duty. Consequently,the demands were sought to be confirmed along with interest and penalties were also proposed. The

matters were adjudicated. The authorities below relied on the decision of this Tribunal in the case of Commissioner of Central Excise, Vapi v/s Harish

Industries Engineers 2008 (223) ELT651(Tri- Ahd.) holding that the nickel perforated screen is an accessory and the same is not part or the

component of the machinery specified at item no. 1-40 of the said notification in list 2. Aggrieved from the said orders, appellant is before us.

3. Learned Counsel for the appellant submits that the whole case of the department is based on the decision of this Tribunal in the case of Harish

Industries Engineers (supra) to say that the above said machine cleared by the appellant are accessories and not a part or component. It is his

contention that in the case of Harish Industries Engineers, the issue before this Tribunal was of classification. Therefore, the said decision cannot be

relied upon to deny the benefit of the notification. He relied on the decision of CCE Jaipur vs Mewar Bartan Nirman Udyog 2008 (231) ELT 27 (SC)

to say that where the language is plain and clear, effect must be given to it. While interpreting the exemption notification, one cannot go by rules of

interpretation applicable to cases of classification dispute in the cases of HSN which is the basis of tariff. He further relied on the decision of the

Calcutta High Court in the case of Indo Japanese Industries vs Assistant Collector, Calcutta 1986 (24) ELT 527 (Cal.) wherein it was held that

Dynamo lighting sets is a cycle part exempt from duty although that is sold separately. He also relied on the decision of Jyoti Limited vs. Union of

India 1979 (4) ELT(J546) Guj.

4. On the other hand, learned Authorised Representative strongly supported the impugned order and heavily relied on the decision of Honâ??ble

Apex Court in the case of State of U.P vs Kores (India) Ltd. 1990 (26) ECR 464 (SC) and Harish Industries Engineers (supra) to say that the said

items cleared by the appellant are not parts or components of the items mentioned at Sr. no. 1-40 of list 2 of notification no. -6/2011-CE dated

01/03/2011 and are accessories only.

5. Heard the parties considered their submissions. On consideration of the

submissions made by both the parties and records placed before us, we find

that the appellant has classified the product cleared by them under chapter heading no. 84425031.

For better appreciation of the facts, the said chapter tariff heading is extracted below:

8442 Machinery, apparatus and equipment (other than the machine tools of

headings 8456 to 8465) for preparing or making plates, printing components;

plates, cylinders and other printing components; plates, cylinders and

lithographic stones, prepared for printing purposes (for example, planed,

grained or polished)

844230 - Machinery, apparatus and equipment:

8442 30 10 ---Brass u 12%

rulesâ?¦

8442 30 20 --- u 12%

Chasesâ?¦

8442 30 90 --- u 12%

Otherâ?¦

8442 40 00 - Parts of the foregoing machinery, apparatus or equipment kg. 12%

844250 - Plates, cylinders and other printing components; plates, cylinders and

lithographic stones, prepared for printing purposes (for example, planed,

grained or polished).

84425010 ---Plates and cylindersâ?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦ kg. 12%

84425020 ---Lithographic platesâ?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦ kg. 12%

---Plate, cylinder and lithographic stones prepared for printing process:

844250 31 ---Plate and cylinder for textile printing machineâ?¦â?¦â?¦â?¦. kg. 12%

8442 50 39 --- kg. 12%

Otherâ?¦

8442 50 40 ---Highly polished copper sheets for making blocks â?¦â?¦.. kg. 12%

8442 50 50 --- Highly polished zinc sheets for making process blocksâ?¦ kg. 12%

8442 50 90 --- kg. 12%

Otherâ?¦

The classification of the product cleared by the appellant has been admitted by both the sides and the Revenue has not raised any objection with

regard to classification. The only issue raised by the Revenue with regard to denial of notification no. 06/2011-CE dated 01/03/2011 and heavily relied

on the decision of Harish Industries Engineers (supra). Admittedly, in the case of Harish Industries Engineers (supra) the dispute with regard to

classification of product and in the case of Mewar Bartan Nirman Udyog (supra) Honâ??ble Apex Court has clarified that while interpreting

exemption notification, one cannot go by rules of interpretation applicable to cases of classification under the tariff. Therefore, the said decision in the

case of Harish Industries Engineers(supra) is not applicable to the facts of the present case. We take a note of the fact that the appellant has

classified the impugned goods under CTH 844250 which includes â?? Plates,cylinders and other printing components;â? The said classification has not

been disputed by the Revenue. In the circumstances while giving benefit of notification no. 06/11-CE dated 01/03/2011 in list 2 Sr. no. 41 which reads

as under:

â??(v) in List-2, after item no. 40 and the entries relating thereto, the following shall be added namely:

(41) Parts or components of the machinery specified at item nos.(1) to (40) above.â??

â??parts or components of textile printing machineryâ?? are entitled for the benefit of said notification which cannot be denied without

challenging the classification. In these circumstances, we hold that appellant is entitles for benefit of Sno. 41 in list 2 of notification no. 06/2011-CE

dated 01/03/2011. Therefore, no demand is sustainable against the appellant. Consequently, no penalty is imposable on the appellant.

6. In view of the above discussion, we set aside the impugned orders and allow the appeals with consequential relief, if any.

(Pronounced in the open court on 30.11.2021)

