

Tisco Vs. Collector of C. Ex.

Tisco Vs. Collector of C. Ex.

SooperKanoon Citation : sooperkanoon.com/10054

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-18-1996

Reported in : (1997)(91)ELT211TriDel

Appellant : Tisco

Respondent : Collector of C. Ex.

Judgement :

1. In this appeal filed by M/s. TISCO, the short point for our consideration is, whether the goods such as pick axes, beaters, powrah/hoe/spade, shovels and crow-bras etc. which are not exclusively used for agricultural purposes, but are capable of use in other activities, civil construction etc. are eligible for exemption under Notification No. 55/75-C.E., dated 1-3-1975. The goods mentioned above were classifiable under Item No. 68 of the Central Excise Tariff. Under exemption Notification No. 55/75-C.E., among others, the agricultural implements and parts thereof were exempted from excise duty. The exemption under this notification was, however, not available to power-operated agricultural implements and parts thereof, and (ii) implements designed for use as attachments with tractors or power tillers and parts thereof. The exemption was denied to these products on the ground that they were not exclusively used for agricultural purposes, but were capable of use and are actually being used in several other works, such as civil construction work etc.

2. The matter was heard on 18-9-1996. Shri Ravinder Narain, Advocate, with Ms. Amita Mitra, Advocate, appeared for the appellants. Shri M.Jayaraman, JDR,

represented the respondents/Revenue.

3. Shri Ravinder Narain, Advocate, stated that the Revenue had admitted that the goods in question were used for agricultural purposes, but had denied the exemption only on the ground that they were capable of other uses also. He submitted that as the predominant use of the goods is for agricultural purposes, the exemption could not be denied to them. He also referred to a number of decisions wherein it has been held that if the goods are commonly used for agricultural purposes, they are agricultural implements.

4. Shri M. Jayaraman, JDR, in reply reiterated the points made in the order of the Collector of Central Excise (Appeals).

5. We have carefully considered the matter. There is no dispute that the goods under consideration were classifiable under Item No. 68 under Notification No. 55/75-C.E., dated 1-3-1975, agricultural implements and parts thereof enjoy complete exemption from levy under Item No. 68.

The goods in question are not those which had been excluded from the purview of exemption under Sl. No. 14 of the Schedule annexed to Notification No. 55/75-C.E., aforesaid.

6. As the Revenue had admitted that they were used for agricultural purposes, the exemption in our opinion could not be denied only on the ground that they were not exclusively usable for agricultural purposes.

7. In the case of *Engineering Traders v. The State of Uttar Pradesh - 1973 (STC) 31 at Page 456*, the full Bench of the Allahabad High Court had observed as under: "No one can dispute that shovels and spades are agricultural implements but they are used quite extensively in building operations also. In order that an appliance may be an agricultural implement, the real test is not that it should be exclusively used for agricultural purposes but that it should be commonly so used and it should be intimately and directly connected with agricultural operations." Reference has also been made by the learned Advocate to the Madras High Court decision in the case of *Hargo Industries v. The State of Tamil Nadu, 1979 (STC)*

44 at Page 345. He has also referred to the Mysore High Court decision in The State of Mysore v. Santoomal Kishnomal 1962 (STC) 13 at Page 313, wherein it had been held that the crow-bar is an agricultural implement.

8. In view of the legal position, as settled by the different High Courts, we consider that the view taken by the Collector of Central Excise (Appeals) was not correct. As a result/the appeal filed by M/s.

TISCO is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com