Sundram Fasteners Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-25-1996

Reported in : (1996)(88)ELT578TriDel

Appellant : Sundram Fasteners Ltd.

Respondent : Collector of Central Excise

Judgement :

1. Arguing for the appellants Shri Nambirajan submitted that appellants have requested the Assistant Collector to classify 32 items of bolts, nuts and screws under Tariff Item 68 on the ground that they perform fastening functions only incidental and, therefore, they are classifiable under Tariff Item 68. Assistant Collector negatived the contention and held that these items are classifiable under Item 52.

Shri Nambirajan submitted that although they succeeded before the Collector (Appeals), on appeal filed by the department the Tribunal held that these items are classifiable under Tariff Item 52 of the erstwhile Central Excise Tariff. He submitted that he is not questioning the classification of the product in view of the decision of the Supreme Court in the case of Plasmac Machine Mfg. Co., Ltd., v.Collector of Central Excise, reported in 1991 (51) E.L.T. 16} wherein it was held that the bar nuts for fixing the platens at appropriate distances classifiable under Tariff Item 52 of erstwhile Central Excise Tariff as "Nuts" and not under T.I. 68. But he said that demand is clearly barred by time since show cause notice has not been issued by the department after passing of the order by the Tribunal. In the present case, show cause notice dated 30-5-1981 was issued only for change of classification and subsequently after passing the order by the Tribunal no show cause notice was issued but duty was demanded which is not according to law. He contended that to keep the demand alive it was the duty on the part of the department and it should have issued show cause notice. He referred to the decision of the Supreme Court in the case of Gokak Patel Volkart Limited v. Collector of Central Excise, Belgaum, reported in 1987 (28) E.L.T. 53 (S.C.) in support of his contention. Similarly, he referred to Para 9 of the said decision which is reproduced as under :- "No notice seems to have been issued in this case in regard to the period in question. Instead thereof an outright demand had been served. The provisions of Section 11A(1) and (2) make it clear that the statutory scheme is that in the situations covered by the Sub-section (1), a notice of show cause has to be issued and Sub-section (2) requires that the cause shown by way of representation has to be considered by the prescribed authority and then only the amount has to be determined. The Scheme is in consonance with the rules of natural justice. An opportunity to be heard is intended to be afforded to the person who is likely to be prejudiced when the order is made before making the order thereof.

Notice is thus a condition precedent to a demand under Sub-section (2). In the instant case, compliance with this statutory requirement has not been made, and, therefore, the demand is in contravention of the statutory provision. Certain other authorities have been cited at the hearing by counsel for both sides. Reference to them, we consider is not necessary." He also referred to the decision of the Tribunal in the case of Collector of Central Excise, Jaipur v. Hindustan Copper Limited, reported in 1992 (20) E.T.R. 131 wherein the same has followed the aforesaid decision of the Supreme Court in arriving at the conclusion.

2. Shri P. Das, learned D.R. submitted that department was justified in classifying the goods under Item 52. Further, since the matter was pending before the Tribunal and only after passing the order by the Tribunal demand was raised and limitation is not applicable to the facts of this case.

3. We have carefully considered the submissions made by both the sides.

In the instant case, D.D. 2 form issued after passing the order by the Tribunal cannot be treated as show cause notice. In view of the judicial pronouncements, it is clear these demands were in contravention of the statutory requirements. In the absence of the show cause notice issued by the department after passing the order by the Tribunal, demand raised based on D.D. 2 form cannot be justified and, as such, order in raising demand is not substainable in our view. In the view, we have taken, we accept the plea of the appellants that demand is clearly barred by time in this case. With this view, we set aside the impugned order and accordingly the appeal is allowed with consequential relief.