Collector of Central Excise Vs. Star Metal and Tubes Corpn.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-25-1996

Reported in : (1997)(89)ELT533TriDel

Appellant : Collector of Central Excise

Respondent : Star Metal and Tubes Corpn.

Judgement :

1. In this appeal filed by the Revenue the matter relates to the classification of the products of copper which the respondent M/s. Star Metal & Tubes Corpn. have classified as pipes and tubes of copper falling under sub-item No. (9) of Item No. 26A of the old Central Excise Tariff and the Department had classified the said products as shells and blanks for pipes and tubes; hollow products of copper classifiable under sub-item No. (10) of the Item No. 26A of the Tariff.

The Assistant Collector of Central Excise, Bombay on the basis of the Deputy Chief Chemist's report ISI specification, certificate groups and documentary evidence on record had held that the product manufactured by M/s. Star Metal & Tubes Corpn. were pipes and tubes and that the exemption from excise duty in excess of 9% in terms of Notification No.199/84-C.E., dated 17-9-1984 had been correctly claimed. This order had been confirmed by the Collector of Central Excise (Appeals), Bombay.

Among other grounds the Collector of Central Excise (Appeals) had referred that the respondent's products were known in the trade parlance as copper pipes and tubes within the definition envisaged in the explanation under Item No. 26A. In the appeal the Revenue had taken a view that the goods in question did not justify the criteria as given in the tariff entry.

2. The matter was heard on 25-9-1996 and 26-9-1996. Shri M. Jayaraman, JDR appearing for the Revenue submitted that the order passed by the Collector of Central Excise (Appeals) is not correct as he had not discussed that the products of the assessee were not directly used by the purchasers but become pipes and tubes after they are further drawn.

The report by the Deputy Chief Chemist on which the Assistant Collector has relied on was not categorical. In reply Shri H.A. Goankar, Consultant stated that both the Assistant Collector of Central Excise and the Collector of Central Excise (Appeals) had discussed the matter in detail and have classified their products as pipes and tubes of copper. He submitted that the Assistant Collector had specifically reported that the goods manufactured by them justify the criteria as in the ISI specification. He stated that the relevant ISI specification is IS, 5493 - 1981.

3. We have carefully considered the matter. Under Item No. 26A pipes and tubes of copper are classifiable under sub-item No. (9) and shells and blanks for pipes and tubes are classifiable under sub-item No.(10). In the tariff both these products attract the same rate of ad valorem value. The shells and blanks have been defined as hollow products produced by extrusion process, having cross-section and wall-thickness and a continue periphering produced by drawing. The Assistant Collector of Central Excise after examining the product and giving due consideration to the Deputy Chief Chemist's report, ISI specifications and certificate of one expert had come to a finding that the goods in question were pipes and tubes. The Collector of Central Excise (Appeals) Bombay while disposing of the appeal by the Department against the order of the Assistant Collector had also held that the goods in question were pipes and tubes. The Revenue had not been able to produce any evidence which may call for any interference in the orders passed by both the Assistant Collector of Central Excise and Collector (Appeals).

4. In appeal filed by the Revenue it has been submitted that there was a specific evidence in the form of statement of the purchasers of the products of the assessee to the effect that they were drawing the goods purchased by them from the assessee so as to convert them into pipes and tubes. We do not find any evidence to this effect on record.

5. It is also seen that under Ministry's Clarification No. 212/7/86-CX.6, dated 30-5-1986 it had been clarified that not withstanding the fact that shells and blanks were falling under a sub-item (10) such shells and blanks were actually semi-finished goods and therefore were entitled for movement under Rule 56B of the Central Excise Rules for their conversion into pipes and tubes in outside premises. It was further clarified that in the new tariff entries with effect from 28-2-1986 the position remains essentially the same inasmuch as shells and blanks now fall under Heading No. 7209.00 while pipes and tubes are falling under Heading No. 7408.00. Respondents in the case before us.

had paid Central Excise duty as applicable to pipes and tubes. As the respondent have already paid duty as applicable to pipes and tubes and as the issue as how these goods are assessed in the hands of their customers when they are further processed is not before us, we find no ground to interfere with the orders already passed.

6. Taking all the relevant considerations into account we find no merit in this appeal filed by the Revenue and the same is rejected. The cross-objections filed by the respondent are also disposed of in the above terms.