

Logwell Forge Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-17-1996

Reported in : (1997)(90)ELT384TriDel

Appellant : Logwell Forge Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The sole issue for determination in the above appeal which arises out of the order dated 31-7-1989 passed by the Principal Collector of Central Excise, New Delhi is the correct classification of "pieces roughly shaped by forging of steel" manufactured and cleared by the appellants herein during the period 1-3-1986 to 21-7-1987. Appellants claim classification under Heading 72.08 while the Department has confirmed classification under Heading 73.08 as "other articles of iron or steel".

2. We have heard Shri R.C. Gupta, learned Counsel and Shri Mohamed Ali, learned DR.3. The process of manufacture adopted by the appellants is briefly as under: The appellants purchased raw materials i.e. duty [paid] steel bars and rods and cut the same to required weight and sizes and thereafter heat them in furnaces at a temperature of approximately 1050. The hot pieces are thereafter put in the dies and hammering operation is done with the help of a hammer to get the required shape and sizes. Extra material in the form of flesh is trimmed off with the help of trimming die. The forgings so shaped are normalised to relieve the stress and grinding and shortblasting is done to remove extra flesh by descaling.

These roughly shaped pieces of steel are thereafter despatched to the customers and at the customers' end, machining and other finishing processes are carried out and then they are fitted into automobiles.

4. The adjudicating authority has held that these goods are not simple crude forgings but undergo several processes, they do not have large dimensional tolerances and are clearly identifiable as motor vehicle parts, short of machining and finishing operations only and, therefore, chargeable to duty under Sub-heading 7308.90 of the CET 1985. The demand has been confirmed for the extended period of limitation on the ground that the appellants had suppressed the fact of production and clearance of excisable goods from their factory premises.

5. Both sides submit that the issue is covered by the order of the Tribunal in the case of Aravali Forgings Ltd. v. Collector of Central Excise, Jaipur reported in 1994 (70) E.L.T. 693 (Tribunal) in which the Tribunal has confirmed classification of steel forgings upto the stage of proof machining under Heading 7208.00. We have gone through the above-cited judgment and note that the Tribunal has rejected the contention of the Revenue that, as the goods have become fit for machining, they are no longer 'roughly shaped'. The Tribunal has held that a bare reading of the HSN Explanatory Notes to Chapter 72 makes it clear that in order to exclude the goods from Heading 7208, the goods should have undergone the process of folding, assembling, welding, turning, milling or perforating, while it was the undisputed position in the appeals decided, that the goods had emerged at a stage just prior to machining. The Tribunal had also rejected the grounds assigned by the Revenue for excluding sub-heading 7208.00 before examining the inclusion of the goods under subheading 7308.90 of the CET, 1985 for the reason that the basis of invoking the HSN Explanatory Notes to Chapter 72 was erroneous, as the respective tariff entries had not been aligned for the period in question and also that the HSN Explanatory Notes only have persuasive value and the real test is the trade and commercial understanding of the product and the technical sense in which it is understood. We agree that the above judgment squarely applies to the facts of the present case, in which also the Department has relied upon the HSN Explanatory Notes to Chapter 72 and hence following the ratio thereof, we set aside the impugned order and allow the appeal with consequential relief, if any,

due to the appellants.

6. Learned Counsel stated that the appellants were engaged in the manufacture and selling. "pieces roughly shaped by forging of steel".

The process of manufacture adopted by the appellants can be briefly described as follows:- "The appellant purchases the raw material, viz., steel bar which are duty paid. The same are cut to the required sizes and weight and are thereafter heated in furnaces at high temperatures of approx. 1050 C. The hot pieces are thereafter "put in the dyes" and by the process of hammering with the help of hammer, pieces of required shape and sizes are obtained. Subsequently, extra material in the form of flesh is trimmed off with the help of trimming die. The forgings so shaped are normalised to relieve the stress and by the process of grinding and shotblasting extra flesh and descaling are removed. These roughly shaped pieces of steel are thereafter despatched to the customers." The appellant does not undertake the work of machining, polishing or any other finishing process in respect of such roughly shaped forged pieces of steel but the same are undertaken by the customers at their site/factory. The pieces roughly shaped by forging of steel removed by the appellant from its factory are thus admittedly in rough shape and are not ready for direct use in the factory of the customer. The appellant states that the pieces roughly shaped by forging of steel produced by the appellant are so produced as per the requirements of the customers who supply the appellant with specific designs and specifications. It is only in accordance therewith that the appellant produces the aforesaid goods. The pieces so forged are designed for use after machining, polishing and other finishing operations are carried out, as automobile parts. However, since the appellant does not carry out the process of machining, polishing or any other finishing process in its factory, the aforesaid pieces continue to remain merely roughly shaped forged pieces of steel and do not become automobile parts per se.

7. That prior to 1-8-1983, Tariff Item 25 relating to "iron and steel and products thereof" came into force by virtue of Notification No.188/83, dated 5-7-1983. Pieces roughly shaped by forging of iron or steel fell under Tariff Item No. 26AA which included iron or steel products. Sub-item (1) (a) inter alia applied to "forged

or extruded shapes and sections". However, the same were exempt from payment of duty of excise by virtue of Notification No. 206/63, dated 30-11-1963 as amended from time to time, if manufactured out of duty-paid inputs specified in the said notification. After 1-8-1983, the goods in question fell under sub-item (8) of Tariff Item 25. The appellants were under a bona fide belief that since his goods were wholly exempt from payment of duty both before and after 1-8-1983, and since it was exempt from licensing control by virtue of Notification 111/78, did not obtain any licence in the prescribed form. The appellant, however, carried on its activities within the knowledge of the Department and even filed a declaration claiming exemption as early as 1983.

8. It was their contention that the learned Principal Collector had erred in classifying the goods under 73.08 (instead of 72.08). Further, the Collector has failed to appreciate that prior to 1-3-1986, the goods were classifiable under Tariff Item 25(8) and were entitled to the benefit of Notification No. 208/83 and the Department having accepted this position, they could not fall outside the scope of Heading 72.08 since the tariff description for such goods has remained the same and there was no change in the process of manufacture.

Furthermore, there was no evidence which would go to show that the goods had acquired the characteristics of automobile parts. In fact, he had himself come to the finding that they were unfinished, unpolished and these processes were required to be undertaken in the factory of the customer.

9. That the Collector has erred in merely placing reliance in the Explanatory Notes to the HSN to come to his conclusions. Ignoring the language of Item 25(8) of the old tariff (Heading 72.08 of the new tariff) and Rules of Interpretation given in the new tariff has also the test of common parlance.

10. Furthermore, the show cause notice was issued on 22-8-1989 in respect of the period 1-3-1986 to 21-7-1987 and was itself clearly barred by limitation and particularly extended period was not available to the Department that the activities were carried on within the knowledge and consent of the Department as evident from the correspondence between them and the adjudication order of Supdt. dated 18-7-1984. It was their submission that there was neither any justification in

confirming the demand nor for imposing any penalty.

11. Learned DR drew attention to the order-in-original but very fairly accepted that he has himself come to the conclusion that the goods were unfinished and unpolished. He, however, emphasised that the goods had acquired the shape and characteristics of motor vehicle parts and it is well-established by now that the BTN and HSN had strong persuasive value and the tariff after 1-3-1986 had been broadly aligned with them and therefore, they could be referred to. He however, very fairly accepted that the Collector had noted that the goods were unmachined as well. He also accepted that the Tribunal has held in the case of Aravali Forgings Ltd. v. CCE, Jaipur reported in 1994 (70) E.L.T. 693 that forgings of steel upto the stage of proof machining were not classifiable under sub-heading 7308.90.

12. Learned Counsel and other representatives of the appellants displayed the samples of the items produced and showed both unmachined & unpolished pieces which the said pieces were their products and the machined and finished and polished pieces which are identifiable as motor vehicle parts and treated as such in order to demonstrate the contrast and also filed photographs thereof.

13. Ld. Counsel further stated that the items are not traded as motor vehicle parts and they are not known in the market as motor vehicle parts but are only sold as forged articles for being further worked to make them as usable and identifiable motor parts.

14. We have considered the above submissions. We observe that the Ld. Counsel's arguments have a lot of force. From the samples displayed before us it is evident that the material is at a stage prior to the one at which it could be said to acquire the characteristics of an identifiable motor vehicle parts as evident from the contrast between them and the machine and finished pieces made out of them and also displayed before us.

15. The Department has also not been able to produce evidence to show that these are marketed as motor vehicle parts in the form in which they are manufactured and sold by the appellants. In fact the Department itself accepted

that they are in an unmachined, unfinished, unpolished stage and it has been already held by the Tribunal in the case of Aravali Forgings Ltd. v. CCE, Jaipur cited above that forgings of steel upto the stage of proof machining were not classifiable under sub-heading 7308.90 as rightly pointed out by the Id. Counsel and very fairly accepted by the Id. DR. Hence, the impugned order is set aside, and the appeal is allowed, with consequential relief, if any, due to the appellants.

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