Arvind Construction Co. Limited Vs. Collr. of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-13-1997

Reported in : (1997)(93)ELT115TriDel

Appellant : Arvind Construction Co. Limited

Respondent : Collr. of Cus.

Judgement :

1. This appeal is directed against the order-in-appeal dated 8-12-1989 of C1ollector of Customs (Appeals), Bombay.

2. The appellants imported a consignment of spare parts which included inter alia, bolts and nuts. These were assessed to duty under CTH 7318 as nuts and bolts. Subsequently they filed a refund claim claiming concessional rate of duty under Notification No. 86/86-Cus., dated 17-2-1986 which gives partial exemption to bolts and nuts. This claim was rejected by the Assistant Collector on the ground that the impugned goods are parts of Bulldozers of heading 84.29 and therefore, would be classifiable under heading 9806 in terms of note 1 to Chapter 98. He held that benefit of exemption cannot be available since that Notification applies only to goods of Chapters 72 and 73.

3. Arguing for the appellants, the Learned Advocate submits that they are covered under Notification No. 86/86, when these are held to be parts of Bulldozers as basically the impugned goods are nuts and bolts.

5. We have heard both sides. In the first place, we are of the view that once the goods were assessed to duty under CTH 7318, the Assistant Collector while dealing with a refund claim in regard to that assessment could not have arrived at the classification other than one which was indicated in the Bill of Entry, without putting on notice the appellants. In the second place, we note that nuts and bolts being general purpose goods are specifically excluded from Chapter 93. The Notification No. 257/88 issued by virtue of powers conferred under Clause (d) of Note 7 of Chapter 98 specifically excludes parts of general use as defined in Note 2 to Section XV of base metals from the purview of Chapter 98.

6. As observed earlier by us, the Assistant Collector could not adopt for the first time a classification, in regard to which the appellants have not been put on notice, in a refund matter.

7. Since the Notification Nos. 86/86 in very clear terms exempts bolts and nuts and admittedly the goods have been assessed as bolts and nuts, they will be eligible to exemption under Notification Nos. 86/86. In view of this, we set aside the impugned order and allow the appeal.