Collector of Central Excise Vs. A.T.E. (Pvt.) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-21-1997

Reported in : (1997)(93)ELT609TriDel

Appellant : Collector of Central Excise

Respondent : A.T.E. (Pvt.) Ltd.

Judgement :

1. In this appeal filed by the Revenue, being aggrieved with the order-in-appeal dated 24th March, 1987 passed by the Collector of Central Excise (Appeals), Bombay, the mater relates to the classification of the plugs and sockets manufactured from the un-wrought zinc alloy ingots through the process of casting. The Assistant Collector of Central Excise, Ahmedabad, who had adjudicated the show cause notice dated 6-10-1984 had classified them under Item No. 68 of the erstwhile Central Excise -Tariff (hereinafter referred to as the Tariff), while the Collector of Central Excise (Appeals) held them classifiable under Item No. 26B(i) of the Tariff, with benefit of Exemption Notification No. 180/84-C.E., dated 1-8-1984. The respondents are M/s. A.T.E. (Pvt.) Ltd., Ahmedabad, and the Classification List involved is dated 17-11-1984.

2. The matter was posted for hearing on 12-12-1996, when Shri P.K.Jain, SDR, appeared for the appellants/Revenue. Shri K.K. Anand, advocate, represented the respondents, M/s. A.T.E. (Pvt.) Ltd. 3. Shri P.K. Jain, SDR, stated that the goods in question were articles of zinc and were not unwrought zinc. The goods under consideration are plugs and sockets which were the articles of zinc, but the same

were not specified in any sub-item of Item No. 26B of the Tariff and accordingly, they were correctly classifiable under Item No. 68 of the Tariff. In support of his contention, the learned SDR referred to the Tribunal's decision in the case of Devidayal Agro Metal Industries v.CC, Bombay -1988 (33) E.L.T. 467 (Tribunal), where reference had been made to the Board's clarification given on 27-9-1965 [wherein it had been clarified that Central Excise Duty under Item No. 26B(i) was recoverable in the case of those manufacturers who produce unwrought zinc by the process of smelting]. Reference was also made to the Tribunal's decision in the case of Chloride India Ltd. v. Collector of Central Excise, 1991 (53) E.L.T. 380 (Tribunal), wherein it had been held that the electric storage battery parts were classifiable under Item No. 68 of the Tariff.

4. In reply, Shri K.K. Anand, advocate, submitted that the plugs and sockets had not been worked upon; they were not wrought products and were covered by the expression 'Unwrought Zinc'. After casting, no further work had been done thereon. He referred to the Tribunal's decision in the case of Collector of Central Excise v. Metal & Ores Co., 1990 (45) E.L.T. 262 (Tribunal), wherein it had been held that the zinc sheet and plate were classifiable under Item No. 26B of the Tariff and by the processes of polishing, trimming and degreasing, no new product for classification under Item No. 68 of the Tariff emerged.

Reference was also made to the Tribunal's decision in the case of Sikka Heat Treatment Centre v. Collector of Central Excise, New Delhi, 1996 (81) E.L.T. 628 (Tribunal). The Tribunal had held in that case that the elastic rail clips were classifiable under Item No. 26AA(ia)/25(8) of the erstwhile Central Excise Tariff and not under Item No. 68 of the Tariff.

5. We have carefully considered the matter. The respondents were engaged in the manufacture of plugs and sockets. These plugs and sockets were manufactured from unwrought zinc alloy ingots which during the relevant time were classifiable under sub-item (i) of Item No. 26B of the erstwhile Central Excise Tariff. The matter relates to the period after the tariff entries with regard to the non-ferrous metals and products thereof had been recast as part of 1984 Budget. The relevant entries came into force w.e.f. 1-8-1984. The period involved is prior to 28-2-1986

when further amendments were made in the relevant tariff entries as a consequence of introduction of the new central excise tariff based on the Schedule to the Central Excise Tariff Act, 1985. The plugs and sockets were pressure die cast components manufactured after the unwrought zinc alloy ingot was melted and the molten zinc alloy metal was injected into the dies with the required pressure and temperature. The respondents had sought classification of the above components manufactured from the ingots [classifiable under Item No. 26B(1)] as unwrought zinc under the same Tariff Entry No.26B(1) of the Tariff.

6. The issue for our consideration is, whether the components - plugs and sockets, so manufactured from unwrought zinc alloy ingots, were or were not "unwrought zinc" classifiable under the same sub-item (1) of Item No. 26B of the Tariff from which they were manufactured. The Item No. 26B relevant for the purpose is as introduced in the Central Excise Tariff as a part of 1984 Budget and as effective from 1-8-1984. If such components - plugs and sockets - were unwrought zinc, then further question for consideration is, whether they were eligible for exemption under Notification No. 180/84-C.E., dated 1-8-1984, as applicable to unwrought zinc under Sl. No. 1 of the Table annexed to that notification dated 1-8-1984.

7. Under Item No. 26B, zinc and products thereof were covered. Zinc included any alloy in which zinc predominated by weight over each of the other metals. Sub-item (1) of Item No. 26B covered the following: Unwrought zinc in any form including blocks, plates, ingots, cakes, bars, billets, hard or soft slabs, cathodes, anodes, pellets, spelter and broken zinc.

Sub-item (2) covered waste and scrap of zinc; sub-item (3) & (4) covered specified wrought products; sub-item (5) covered zinc calots; sub-item (6) covered zinc powders and flakes; sub-item (7) covered pipes and tubes of zinc; and sub-item (8) covered shells and blanks for pipes and tubes; hollow sections of zinc.

The scheme of the Tariff Entry makes it clear that broadly the Item No.26B covered (i) unwrought zinc, (ii) specified wrought products, and (iii) other specified zinc products. All the articles of zinc were not covered by the said Tariff Entry as in force in prior to 28-2-1986.

8. Zinc is mainly extracted from the sulphide ore (zinc blende or sphalerite); through the carbonate and silicate ores (smithsonite, hemimorphite etc.) are also used. In either case, the ore is first concentrated and is then roasted or calcined to produce zinc oxide (in the case of the sulphide and carbonate ores) or water-free zinc silicate (in the case of silicate ores). Zinc is extracted from these by thermal reduction or (except in the case of silicate ores) electrolysis. (I) Thermal reduction is effected by heating the oxide or silicate with coke in closed retorts. The temperature is sufficient to vaporise the zinc which distils over into condensers where most of the metal is collected as "spelter". This impure zinc may be used directly for galvanising or may be refined by various methods. (II) Electrolysis - The zinc oxide is dissolved in dilute sulphuric acid. This solution of zinc sulphate is purified and then electrolysed to produce the refined zinc.

Unwrought zinc is the zinc metal in its different degrees of purity from spelter to refined zinc, whether in blocks, plates, ingots, cakes, bars, billets, hard or soft slabs, cathodes, anodes, pellets, spelter or broken zinc.

Unwrought zinc is normally intended for use in galvanising (by the hot-dip or electro-deposition processes), for making alloys, for rolling, drawing or extrusion, or for casting into shaped articles. The shaped articles casted from unwrought zinc were not the unwrought zinc.

9. The plugs and sockets, so manufactured, were not the unwrought - ^ zinc. They were also not the articles which were specified in any of the sub-items of Items No. 26B of the Tariff.

10. The Central Excise Tariff in respect of ferrous (iron and steel) was aligned with the Customs Tariff as a part of 1983 Budget. Para 137 of the Finance Minister's Budget speech is extracted below: 137. I now come to changes which do not involve any significant revenue. I propose a few changes in the tariff descriptions relating to iron and steel items which would align the Central Excise Tariff, as far as these items are concerned, with the Indian Customs Tariff.

The principles of classification hitherto adopted through executive instructions are being incorporated in the tariff entry itself. The tariff entries relating to iron and steel would be spelt out on a more scientific basis and the problems encountered in the matter of charging countervailing duty would also be reduced considerably.

These changes would, however, be brought into effect from a subsequent date after the necessary ground-work. Till then, the present effective rates of duty would continue.

In the 1984 Budget, similar exercise was undertaken with regard to the non-ferrous metals. Para 121 of the Finance Minister's Budget speech is extracted below: 121. Hon'ble Members would also recall that in the last Budget, I had rationalised the tariff relating to iron and steel items. This year, I have undertaken a similar exercise in respect of non-ferrous metals. The tariff entries are being revised on more scientific basis. These changes as in last year would be brought into effect from a subsequent date. Till then, the present effective rates of duty would continue.

The Customs Tariff was largely based on the Customs Co-operation Council Nomenclature (CCCN), popularly known as Brussels Tariff Nomenclature (BTN). [Refer para 6 of the Tribunal's decision in the case of Chloride (India) Ltd. v. Collector of Central Excise, 1991 (53) E.L.T. 380 (Tribunal)]. Under BTN unwrought zinc was classifiable under Heading No. 79.01. The Explanatory Notes under Heading No. 79.01 are reproduced below : (1) Unwrought zinc in its different degrees of purity from spelter (see General Explanatory Note above) to refined zinc, whether in blocks, plates, ingots, billets, slabs and similar forms or in pellets. The products falling within the present heading are normally intended for use in galvanising (by the hot-dip or electro-deposition processes), for making alloys, for rolling, drawing or extrusion, or for casting into shaped articles.

(2) Zinc scrap and waste. The Explanatory Note to heading 73.03 applies, mutatis mutandis, to the present heading.

(a) Ash and other residues from the manufacture of zinc, from galvanising processes, etc. (e.g., sludges deposited in electro-galvanising, and metallic residues from dipping tanks) (heading 26.03).

It is seen that the unwrought zinc is the metal which is used, among others, for casting into shaped articles. The shaped articles were not the unwrought zinc. The zinc articles which were not otherwise included in other Heading of Chapter 79, were classifiable under Heading No.79.06. During the relevant time i.e. prior to 28-2-1986, there was no sub-item in Item No. 26B of the Tariff corresponding to Heading No.79.06 of the BTN to cover other articles of zinc.

11. In the General Notes under Section XV of the BTN at page 981 of Volume 3 of Explanatory Notes, it has been explained as under : "Each of the Chapters 73 to 81 covers particular unwrought base metals and semi-manufactures of those metals (bars, rods, angles, shapes and sections, wire, sheets etc.) and, in general, articles thereof, except...." At page 1059 with regard to nickel, it has been explained that unwrought nickel is usually in the form of ingots, pigs, pellets, cubes, rondelles, briquettes, shot or cathodes. With regard to aluminium, at page 1066, it had been explained that unwrought aluminium is in the primary form of blocks, ingots, billets, slabs, notched bars, wire bars, or similar forms obtained by casting electrolytic aluminium or by re-melting metal waste or scrap. It had been added that these goods are generally intended for rolling, forging, drawing, extruding, hammering or for casting into shaped articles. Same position is with regard to unwrought magnesium (page 1077), beryllium (page 1079), lead (page 1083), tin (1098) etc.

It is thus seen that only metal in any of its primary forms (such as, ingots, bars, slabs, blocks, billets, plates, cakes, etc.) were the unwrought metal. Among other uses, the unwrought metal was used for casting into shaped articles, but the shaped articles themselves were not unwrought metal.

12. The plugs and sockets manufactured by the respondents were the components. They were identifiable products. They were not unwrought zinc. They were also not any of the products as specified in any of the sub-items of Item No. 26B. As we have discussed above, all articles of zinc were not covered by Item No. 26A of the Tariff, as was in force prior to 28-2-1986. Only those products which were specifically mentioned in sub-items (3), (4), (5), (6), (7), & (8), were included under Item No. 26B, and not all the articles of zinc. The plugs and

sockets manufactured by the respondents were not one of the specified products under the above mentioned sub-items of Item No. 26B of the Tariff. They were not one of the wrought products, specifically mentioned in sub-items (3) & (4) of Item No. 26B. It does not follow that an article which was not one of the wrought products, as specified in sub-item (3) and sub-item (4) of Item No. 26B would be the unwrought zinc for the purposes of sub-item (1) of Item No. 26B. The cast product of a form of shaped article which in no way was akin to the inclusive forms in sub-item (1) of Item No. 26B could not by any reasoning be taken as unwrought zinc for the purposes of sub-item (1) of Item No.26B.13. In this connection, it is relevant to note that on introduction of the new Central Excise Tariff under Schedule to the Central Excise Tariff Act, 1985 w.e.f. 28-2-1986, other articles of zinc were specifically included under Heading No. 79.10 of the new Tariff. Prior to 28-2-1986, there was a residuary entry under Item No. 68 of the old Central Excise Tariff to cover the goods not elsewhere specified. With effect from 28-2-1986, this Item No. 68 was no more there in the Tariff to cover unspecified goods. Thus, prior to 28-2-1986, there was no entry to cover other articles of zinc under Item No. 26B of the old Tariff, while there was entry no. 68 to cover the goods not elsewhere specified. With effect from 28-2-1986, a separate entry was made for other articles of zinc under Heading No. 79.10 under Chapter 79 for zinc and articles thereof, when there was no more a residuary entry under Item No. 68 of the Tariff. Thus, before 28-2-1986 only specified zinc products were covered by sub-item Nos. (3) to (8) of Item No. 26B and as a result, other articles went to the residuary entry No. 68.

With effect from 28-2-1986 item No. 68 was abolished and other articles of zinc were also included in the Chapter 79 for zinc and articles thereof.

14. In view of the above discussion, in our considered view, the plugs and sockets manufactured by the respondents were correctly classifiable under Item No. 68 of the erstwhile Central Excise Tariff.

15. The learned SDR had relied upon the Tribunal's decision in the case of Collector of Central Excise v. Metal & Ores Company, 1990 (45) E.L.T. 262 (Tribunal). The question for consideration was, whether a zinc sheet or a plate

covered with a protective polyethylene films were classifiable under Item No. 68 or Item No. 26B of the old Central Excise Tariff. The Tribunal observed that zinc plates/sheets remained the same zinc plates/sheets after polishing, trimming and degreasing.

The facts and the issue for consideration in that case were entirely different than the one before us. In the case of Sikka Heat Treatment Centre v. Collector of Central Excise, New Delhi, 1996 (81) E.L.T. 628 (Tribunal), the issue involved was the classification of iron and steel elastic rail clips produced by the process of forging. The period involved was prior to "*" 1-8-1983, when the Central Excise Tariff relating to iron and steel was not aligned with the Customs Tariff (which was in turn based on BTN). The consideration in that decision were entirely different.

17. In view of the above discussion, the view taken by the learned Collector of Central Excise (Appeals), Bombay, that the goods in question were un-wrought zinc, was not correct. Accordingly, the goods in question were not eligible for exemption under Notification No.180/84-C.E., dated 1-8-1984, as applicable to unwrought zinc.

18. Taking all the relevant facts and circumstances into account, we set aside the impugned order-in-appeal passed by the learned Collector of Central Excise (Appeals), Bombay, and a result, the appeal filed by the Revenue is allowed. Ordered accordingly.