

Textool Co. Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-01-1997

Reported in : (1997)(94)ELT189TriDel

Appellant : Textool Co. Ltd.

Respondent : Collector of Central Excise

Judgement :

1. In this appeal filed by M/s. Textool Co. Ltd., the matter relates to the classification of the gearwheels, shafts and pulleys. The appellants were engaged in the manufacture of textile machinery and parts of such machinery. They had sought classification of these parts under Heading No. 84.48 of the Central Excise Tariff which covered ancillary machinery for use with machines of among others Heading No.84.45 of the Tariff. The Department had sought to classify these parts under Heading No. 84.43 on the ground that these parts were specifically included in that Tariff Entry. Relying upon the Chapter Notes and the Section Notes, the Collector of Central Excise (Appeals) had held that as these parts were specifically mentioned under Heading No. 84.43, they had to be classified therein irrespective of the fact that, whether they were solely or principally usable for textile machinery.

2. The matter was fixed for hearing on 1-4-1997. The appellants have prayed for decision on merits.

3. On behalf of the Revenue, Shri M. Jayaraman, JDR, submitted that under the relevant Section Note if the parts were specifically mentioned in any Tariff Entry,

they will be classifiable under that specific Tariff Entry. The parts will be classifiable with the machines, if they were not otherwise specifically mentioned in any other Tariff Entry and were solely or principally usable with the particular machine. As in these proceedings, the shafts, gearwheels and pulleys were specifically included in Heading No. 84.83, their classification as decided by the Collector of Central Excise (Appeals) was correct.

4. We have carefully considered the matter. Paras 4.1 and 4.2 from the order of the Collector of Central Excise (Appeals) are reproduced below : "4.1 I have carefully considered the submissions made by the appellants during personal hearing as well as in writing. So far as first point raised by them i.e. recovery of short levy, provided there is a short levy, for a period of six months, any order regarding classification or revision or modification of such classification, cannot stop the specific provision of the Act, which is a superior legislation compared to Rule 173B or orders passed thereunder, because the Central Excise Rules are subordinate legislation and cannot in any case take precedence over specific provision of any Section in the Act. There are decisions to this effect as well as the decisions cited by the appellants. So far as the question of modification is concerned, except for purpose of Section 11A of the Act, it will not be correct to retrospectively change the classification, but for purpose of recovery of short levy, or non-levy, any approval or alteration in classification cannot stand in the way of specific provision of the Act, if it is found on merits, that the goods were classifiable under different tariff heading then the tariff heading approved and as a result there has been a short levy, the powers given by Section 11A are by approval of classification list subsequent to mandates of a subordinate legislation. In the present case, demand being only for six months, the Assistant Collector is competent to confirm the same under Section 11 A. Therefore, it does not matter whether he had himself approved the classification list, wrongly earlier when as long as the classification is correct, short levy is established and recovery of such short levy within a period of six months cannot be stopped by any provision of Central Excise Rules which is in the category of subordinate legislation. In other words, no rule can be framed to [defeat] the purpose of the Act.

4.2 Coming to the second point on merits, the Assistant Collector has correctly referred to section note (sic) to Section VI which is also chapter notes to Chapters 84 and 85. This notes reads as follows"2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of Heading Nos. 84,85.44, 85.45,85.46 and 85.47) are to be classified according to the following rules :- (a) Parts which are goods included in any of the headings of Chapter 84 or Chapter 85 (other than Heading Nos. 84,85 and 85.48) are in all cases to be classified in their respective headings.

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading including a machine of Heading No. 84.79 of Heading No. 85.43) are to be classified with the machines of that kind. However, parts which are equally suitable for use principally with the goods of Heading Nos. 85.17 and 85.25 to 85.28 are to be classified in Heading No. 85.17".

Appellants' claim is that shafts and pulleys are suitable for was solely or principally with Textile machinery. As such, they should be classified under tariff Heading 84.48. This contention is not correct, because Note 2(b) cannot be applied, where Note 2(a) is applicable. Only in failure to apply note (a), note (b) will be applicable and not the vice versa. That is to say, note (b) cannot be applied in preference to (a). In this case, both shafts and pulleys, all sorts, are specifically mentioned under tariff Heading 84.83 as goods. It is common knowledge that shafts and pulleys are not complete machinery of any sort. Therefore, they being parts of machinery, when specifically mentioned under 84.83, has to be classified under 84.83, irrespective of the fact whether such shafts and pulleys are solely and principally usable for textile machinery or any other type of machinery. Accordingly, the classification of the above items under 84.83, by the Assistant Collector is absolutely correct. For the above reasons there is no merit in the appeals and the same are consequently rejected." 5. It is seen from the Section Note 2 of Section XVI that parts which are the goods included in any of the headings of Chapter 84 or Chapter 85 (other than Heading No. 84.84 and 85.48) are in all cases to be classified in their respective headings. As these parts viz.

gearwheels, shafts and pulleys were the goods which were included in Heading No. 84.83, they were to be classified in that Heading. Section Note 2(B) of Section XVI will be applicable only when the parts were such goods which were not included in any of the Headings of Chapter 84 or Chapter 85, referred to above.

6. In view of the above, we do not find any infirmity in the view taken by the learned Collector of Central Excise (Appeals) and as a result, there is no merit in this appeal and the same is rejected.

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