

Collector of Central Excise Vs. Anup Engineering Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-12-1997

Reported in : (1997)(95)ELT110TriDel

Appellant : Collector of Central Excise

Respondent : Anup Engineering Ltd.

Judgement :

1. This is an appeal filed by the department against the order passed by the Collector (Appeals), Bombay.
2. The short point to be considered in this case is whether the following items are classifiable under 7308.90 as claimed by the party or under 8485.90 as per the department. The appellants have filed a classification list claiming the products under Heading 7308.90. It was contended that these products were manufactured by them from duty paid plate of iron and steel by the process of forging, spinning and machining which are being used as top and bottom covers of storage tankers, reaction vessels, distillation columns, boilers and other allied items of chemical industries. It was also contended by them that none of the articles is having any mechanical property for any function to be performed by it.
3. Heard both sides. We have carefully considered the submissions made by both sides and perused the records. We take note of the fact that the issue with reference to classification of the very items has come up for consideration before the Tribunal in the very party's case for the earlier period and, according to the old

tariff it was held that the items were classifiable under Tariff Item 25(13)(iv) of the erstwhile tariff as against Tariff Item 68 as per the department.

4. Shri G.D. Sharma, Id. JDR submitted that the items in the instant case were distinguishable from the earlier case in view of the fact that the party themselves had declared the item under 7308. According to him, since the items were declared under 7308 and taking into consideration that the items were specially designed as parts of particular machine, these items are correctly classifiable under Chapter 84 and not under Chapter 73. He submitted that if the items were not forged and they were for general use then the party should have classified these items under 7208.90 and not under 7308. Since the items were fully finished, they were correctly classifiable under Chapter 84. We find that in respect of the items, the Tribunal had taken a view that these items are not classifiable as machine parts since they are not having any mechanical property and accordingly Tariff Entry 68 was ruled out prior to 7-3-1986. Since the items are the same and in all respects 25(13) (iv) is equivalent to 7308.90 as claimed by the party. Since the items are not at final stage but other articles of iron falling under 7308. Issue with reference to all these items has already been considered by the Tribunal as per Order Nos.

E/537-540/96-B, dated 26-9-1996 1997 (89) E.L.T. 690 (Tribunal).

Although it was argued that these items were specially designed and used as a part of a particular machine, same has not been substantiated before us by the department, since this is an appeal filed by the department. In the facts and circumstances, taking into consideration that the dispute in respect of the very items has already been considered by the Tribunal in the aforesaid case, following the ratio of the said decision, we accept the plea of the respondents.

Accordingly, these items are appropriately classifiable under Chapter 73 and under sub-heading 7308.90. In the view we have taken, we dismiss the department's appeal.

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