Commissioner of Central Excise Vs. Kinetic Engg. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-19-1997

Reported in : (1997)(95)ELT396Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Kinetic Engg. Ltd.

Judgement :

1. The appellant Commissioner of Central Excise and Customs, Aurangabad has filed this appeal praying for setting aside the impugned order No.V.2 (87)801/88/1170, dated 21-2-1990 of Collector of Central Excise and Customs (Appeals), Mumbai and to restore the original order passed by the Assistant Collector of Customs, Ahmednagar dated 28-1-1988 under F.No. VGN (30) l/TD/87 462.

The facts of the case are "That the respondent M/s. Kinetic Engineering Ltd., Ahmednagar, imported Piston Assemblies under the Bill of Entry No. 2150, dated 3-3-1985. They were declared as such in Col. No. 6 and assessed under T.I. 34A for the purpose of CVD. The duty at the rate of 20% ad valorem + 5% Spl. Excise duty were paid as applicable to parts of motor vehicles falling under T.I. 34A. On clearance from Customs, facility under Rule 56 A of Central Excise Rule was claimed, under Notification No. 249/82, dated 1-11-1982. Notification No. 247/82 exempts Motor Vehicles from so much of excise duty as has been paid on Motor Vehicles parts under T.I. 34A subject to following Rule 56A procedure. Notification No. 249/82 grants exemption of goods falling under T.I. 29 & 34. Availing credit of

Rs. 6,37,178.55 was questioned thereunder. Based on purchase documents like Purchase Order, Invoice, entry in the Bill of Entries, Asstt. Collector concluded that only Piston Assemblies were imported, and not components/parts as claimed by the respondent and allowed/assessed by the Customs. Piston Assemblies as such were classified under T.I. 68. Proforma credit of Rs. 6,37,178.55 was disallowed by the Assistant Collector under Order-in-Original and confirmed the demand. Collector of Central Excise (Appeals) passed the impugned order and allowed the appeal on the grounds that Asstt. Collector has no jurisdiction to change the classification and assessment of the goods under question, which were already assessed to duty under T.I. 34A by the Custom Authorities, and cost of the goods were to have been assessed under T.I. 68 by the Customs House, they would have been eligible for set off under Notification No. 201 /79. Hence the appeal by the revenue." 2. The appellant has urged that the Collector (Appeals)'s conclusion that the goods Piston Assemblies are eligible for Notification No. 201 /79 is not correct. The said Notification provides set off of Central Excise duty on the parts manufactured in India and used in the manufacture of all excisable goods and not CVC paid on imported goods falling under T.I. 68. It appears that the assessee has intentionally paid duty under T.I. 34A in order to get the benefit of facility of Proforma Credit, which otherwise would not have been available.

Collector (Appeals) has not considered the observation of Asst.

Collector that the goods imported were in fact the Piston Assemblies falling under T.I. 68, and not the parts/components falling under T.I.34A, thereby erred in paying that T.I. 68 goods were eligible for set off under Notification No. 201/79-CE. Impugned Order requires review.

3. Respondents has urged that "Customs Authority classified the goods imported by the said company under the Bill of Entry No. 498/2-2-1985 and 2158/3-3-1988, under T.I. 34A and assessed at 20% CVD (ADV equivalent to Basic Duty) + 5% SED. The respondent on receipt of goods, has availed Proforma Credit of Rs. 6,37,178.55 under Rule 56A of Central Excise Rules as per the Invoice Note No. 249/82 and 247/82, dated 1-11-1982. The Asstt. Collector has conceded in the Order-in-original that Section 11A of Central Excise Act is not applicable to the

case, but has made out a new case of suppression and wilful misstatement against the respondent which was not alleged in the show cause notice. There is no dispute from the Customs Dept. about the classification of imported goods under T.I. 34A. The Collector (Appeals) has upheld the case of respondent in the impugned order by holding Asstt. Collector has no jurisdiction to change the classification from T.I. 34A to T.I. 68 of imported goods Piston, Under Pins, and Cir. clips. Had the goods been assessed under T.I. 68, the respondent would have been eligible for set off of duty in terms of Notification No. 201/79. The classification of goods as imported is done by Customs Authority, and not respondent to avail benefit of Proforma Credit. Not, it has reached finality from the paras 4 to 6 of impugned order. It is binding on both the parties to the appeal before Collector (Appeals). Appeal is to be dismissed and credit availed is to be restored.

4. The point for consideration is whether the Assistant Collector, Ahemed nagar Division, can question the classification and assessment of imported goods by Customs Mumbai Under T.I. 34A? Our finding thereon is in the negative.

5. Perused the order in original, impugned order, show cause notice reply, written submission, appeal memorandum and documents produced and Rule 56A of Central Excise Rules and Section 11A of Central Excise Act and Notification referred. It is held in the Rulings in 1988 (34) E.L.T. 702 (Tribunal) in the case of Collector of Central Excise, Patna v. TELCO Jamshedpur, "the contention that Central Excise Authority, Jamshedpur have jurisdiction to change the classification of the goods ordered by the Authority at Madras, Nasik and Rajkot even if they felt the classification ordered by the latter was incorrect cannot be accepted", and 1984 (16) E.L.T. 462 in the case of Jay Industries v.Collector of Central Excise Hyderabad, "Central Excise Authority Hyderabad cannot re-open the assessment done at Bombay Customs authority. There is an unwritten law that when Tax Collecting Authority makes an assessment which is incorrect, it is prohibited from saying to the Tax Payer later on that Tax Payer cannot do anything that may be consequence of incorrect assessment made by itself (Tax Collecting Authority). Paras 4 and 5 of the impugned order analyses both the rulings. 1984 (16) E.L.T. 462 is an identical case to the case. In view of the legal position, the grounds of

appeal cannot be accepted and it is rejected. The Impugned Order does not suffer from any infirmity.

Point raised is answered in the negative. So the following order is passed: