

Amrapali Structural (P) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-1997

Reported in : (1997)(73)LC345Tri(Delhi)

Judge : G B Deva, K D Shiben

Appellant : Amrapali Structural (P) Ltd.

Respondent : Cce

Judgement :

1. Arguing on behalf of the Appellants the Ld. Counsel submits that the appellants have undertaken activity of galvanisation and cutting into pieces of angles and they were paying job charges without knowing that the activity carried out by them did not amount to manufacture. On knowing that the activity carried out by them did not amount to manufacture they stopped payment of duty. He submits that the show cause notice was issued raising the demand on the ground that they have cleared M.S. Structural, M.S. Tanks out of M.S. angles and plates. In the order Collector held that what the appellants have cleared were not M.S. Structural but in fact they were transmission towers. He submits that the order has gone beyond the show cause notice which is not permissible and the party was not at all show caused after clearance of transmission towers as alleged in the show cause notice. He submits that it is a settled position now that the galvanisation and cutting does not amount to manufacture and in support of his contention he cited series of decisions. They were as follows: 1. Order-in-Appeal No. 2641/81 passed by Shri J. Datta, Member C.B.E.C., In Re: Hindustan Steel Works Constructions

Ltd. 1982 ELT Aruna Industries v. Collector of Central Excise .Collector of Central Excise v. Dodsall (P) Ltd. 2. Further he submits that galvanisation is not a manufacture relying upon the decision in the case of Gujarat Steel Tubes Ltd. v. State of Kerala and CCE Corporation Ltd. . He also submits that demand was barred by time since the show cause notice was issued raising the demand beyond the period of 6 months in the absence of specific allegations of suppression the demand beyond the period of six month is not sustainable. Relying upon the decision of the Hon'ble Supreme Court in the case of CCE v. HMM Ltd he submits that which are commission and omission the appellants has committed to invoke the larger period as such has not been specified in the show cause notice and accordingly the department was not justified in invoking the larger period. Further referring to the charge in the show cause notice he submits that major portion of the clearance as per the annexure "E" amounting to Rs. 2,10,194.58. These are the items in which only galvanisation and cutting has taken place and process of cutting and galvanisation does not amount to manufacture in spite of specific plea has been taken by the assessee with reference to the clearance the same has not been examined by the Collector.

3. Arguing for the Revenue the Id. D.R. submits that the show cause notice has been issued asking them to pay the job charges since they were paying regularly but stopped suddenly without giving any intimation to the department. He said that what they have supplied to the Electricity Board and other customers is nothing but transmission tower which is in knocked down condition for assembly to erect at site and sufficient evidence was brought on record to show that they have supplied the items which amounts to transmission towers and accordingly the position has been analysed by the Collector in his impugned order and held that what they have cleared is transmission towers in knocked down condition and they are liable to duty and classifiable under tariff item 68 up to 28.2.1986 and thereafter under tariff item 73.08.20 of the schedule to the Central Excise Tariff.

4. We have carefully considered the submissions made by both sides. We find that there are adequate information and decisions on the issue involved in this case to arrive at the conclusion but the factual position is essential and since the facts have not been examined properly by the Collector we are of the view that this

matter requires reconsideration. It was argued emphatically by the Ld. Counsel that major portion of the clearance as per Annexure "E" duty amounting to Rs. 2,10,194.58 in which no other activity has been taken except galvanising and cutting. It was also submitted by the appellants that even in respect of other clearance also the activity undertaken by them did not amount to manufacture. It is a clear position now mere cutting, galvanising, does not amount to manufacture. Whether the clearance referred to in the Annexure "E" in which where any activity like galvanising and cutting has been carried out or not is not clear from the facts since this has not been examined with that angle. In view of this we remand the matter to concerned Commissioner to examine the issue on merits afresh particularly with reference to the clearance made as indicated in the Annexure "E" and pass proper order in accordance with law after affording a reasonable opportunity to the appellants of being heard. We also make it clear that he should confine to the charges levelled and not to go beyond the show cause notice.

This Appeal is allowed by way of remand.

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