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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Nov-17-1997

Reported in : (1998)(74)LC859Tri(Chennai)

Judge : V Gulati, Vice-, T Nambiar

Appellant : Brakes India Ltd.

Respondent : Cce

Judgement :

1. The issue in the appeal relates to classification of castings which have been held to be parts of motor vehicles in terms of the interpretative Rule 2(a) of the Central Excise Tariff.

2. Shri R. Raghavan, earned Counsel for the appellants has pleaded that the appellants manufacture castings at their Sholinghur unit and after subjecting them to some processes these were sent to their Padi unit where further processes are carried out and thereafter they are fitted on to the cylinder assembly and master cylinder assembly. He has pleaded that prior to 1.3.1986 the issue of classification of the very same castings as were subjected to processes at Sholinghur was decided in appeal E/632/85-B1 dated 24.6.1992 and these were held to be only castings. He does not have a copy of this order. He has pleaded that the pleas taken earlier were that castings do not lose their character as castings by reason of the processes carried at their Sholinghur unit and these emerged as identifiable part of motor vehicle only at their Padi unit after further processing was done and

therefore, these cannot be considered as marketable goods as these are used only for assembly by them. He has pleaded that for the purpose of these proceedings, the issue to be decided is whether at Sholinghur unit an identifiable motor vehicle part by reason of the processing done at Sholinghur had emerged. In this connection we had asked the earned Counsel whether the nature of the processes as were carried out at Sholinghur and thereafter at Padi was gone into by the Id. lower authority and any pleas in this regard were urged before that authority, he has pleaded that the lower authority had not examined the issue in regard to the nature and the processes as were carried out at Sholinghur unit and also whether by reason of these processes carried out a new product having distinct name and character and use emerged. He has pleaded that the lower authority has merely gone by the manner in which the appellants' goods were cleared from the Sholinghur unit availing of the benefit of the Notification 217/79 dated 19.4.1979. He has pleaded that in respect of the very same clearances, the issue has been decided in favour of the appellants in appeal No. E/632/85-B dated 24.6.1992. He has pleaded that since interpretative rule was being invoked it was incumbent on the authority to have entered a finding of fact as to whether by reason of the processes as were carried out a new product had emerged. He has pleaded that no market enquiries were also done to show that by reason of the processes as were carried out a new product has emerged. ,He has pleaded no basis has been laid in this regard and therefore, the lower authority's order is not sustainable in law. He has further pleaded that the appellants have filed letters from the dealers and also other evidence that the goods are not recognisable as motor vehicle parts or marketable goods.

3. Heard Shri R. Saroop, the learned DR. He has pleaded that the lower authority has gone by what the appellants had been doing in the past and this was the basis for holding that the goods are motor vehicle parts. He has pleaded that Rule 2(a) of the interpretative rules has been correctly invoked in this case against the appellants.

4. We have considered the pleas made by both the sides. We observe that the question that arises for consideration is whether by reason of the processes which were carried out by the appellants at their Sholinghur unit, after the castings had

been manufactured, the goods acquired a new character and use for being considered as excisable goods. We observe that before Rule 2(a) of the interpretative rules can be invoked it has to be shown that by reason of these processes as were carried out a semi-finished product answering to the description of motor vehicle parts had emerged. It was therefore, desirable that the factual position in regard to this was examined and even market enquiries should have been caused to be made or expert opinion should have been obtained as to whether by reason of the processes as were carried out on the castings any semifinished article having the essential character of a semi-finished article as motor vehicle part has emerged at Sholinghur unit. In this connection the earned Counsel referred us to the decision of this Tribunal reported in 1993 (22) ETR 387 wherein in para 5 the Tribunal has taken note of the criterion laid down in another case relating to in order No. SB/111/92 dated 5.5.1992 regarding the nature of the processes which would bring the castings within the purview of interpretative Rule 2(a). This para is reproduced below for convenience of reference.

5. We have considered the submissions made before us. The Bench in a similar circumstances dealing with a similar issue in the case of Shardlow India Ltd. v. Collector of Central Excise, Coimbatore cited supra has observed as under: We observe that in this case the authorities have not examined the drawings and the specifications to which the forgings were produced and the drawings and the specifications to which these have to be finished for ultimate use in the final product. Before an article can be held to have acquired the essential characteristics of finished product in terms of interpretative Rule 2(a) it is incumbent on that part of the authorities to establish with reference to the nature of the product and the operations which are required to be carried out before the same can be used as finished product after the manufacture thereof. In the present case we find no such exercise had been done and the lower authorities have merely held that the forgings are semi-finished goods and, therefore, can be taken to have acquired the essential characteristics of finished product. This in our view is not enough to hold an article to be finished product for the purpose of assessment in terms of the interpretative Rule 2(a). We, therefore, hold that the learned lower appellate authority's order is not proper and the same is, therefore, set aside and we remand the matter for de novo consideration in the light of our

observations above." We also note that the Madras High Court has also dealt with a similar issue in the case of Motor Industries Co. Ltd. v. Assistant Collector of Cus-toihs .

5. We observe that the position in regard to the facts as above has not been gone into by the lower authority and for that reason, the order is not a proper order. We therefore, set aside the impugned order and remand the matter to the adjudicating authority for de novo consideration and decision in the light of our observations above and after affording the appellants an opportunity of hearing. We also observe that the lower authority should examaine the drawing and specifications of the goods which were processed at their Sholinghur unit for further processes at their Padi unit, and also the expert opinion and the evidence which had been produced before the lower authority at the time of adjudication.