Vikrant Engineers Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-1997

Reported in : (1998)(99)ELT549TriDel

Appellant : Vikrant Engineers

Respondent : Collector of C. Ex.

Judgement :
1. This appeal arises from Order- in-Original dated 24th October, 1989, passed by the Additional Collector, confirming the demand of Rs. 1,07,307.25 and also imposing a penalty of Rs. 50,000/- on the ground that the process of welding pipes of different dimensions would amount to process of manufacture and such steel pipes would bring into existence on such process of welding an item known as steel poles which are marketable as such and are identifiable and conforms to the definition of goods and leviable. He had noticed that the appellants were supplying these items as per the letter dated 27-9-1998 by M/s.

HPSEB, Shimla in terms of description and the identity of the goods. He held that there was a clandestine removal, hence the duty would be confirmed besides imposing penalty under the respective provisions of the Central Excise Act.

2. The learned Advocate submits that the appellants have along with this appeal filed yesterday a Misc. application as well as stay application for dispensing with the pre-deposit and granting waiver of the same and also take the matter for decision as it has been listed for final hearing. He submitted that the Hon'ble

Supreme Court in the case of Bharat Forge & Press Industries Pvt. Ltd. v. Collector of Central Excise, as reported in 1990 (45) E.L.T. 525 has held that mere change in length, size or shape does not bring into existence a new product and the same is not dutiable. Merely because the goods after processing become different commercial commodity or have a distinct name would not result any change in excise classification if they continue to be goods of same species. The Hon'ble Apex Court held that pipe fittings made out of pipe and tubes continue to be pipe and tubes.

The learned Advocate submitted that the Collector (Appeals) by his another order dated 9-3-1991 has accepted their contention and dropped the proceedings on the same item in respect of earlier period and based on these proceedings the criminal prosecution launched by the Additional Collector, Distt. Solan has since been dropped and the appellants, who are accused were discharged. Therefore, he submits that as the issue is covered by the Hon'ble Supreme Court's judgment the stay application and the appeal could be disposed of in that terms.

3. The learned DR reiterates the departmental view taken by the Additional Collector in the impugned order.

4. On a careful consideration of the submissions made by both the sides, we allow this stay application by granting dispensation of the predeposit and staying its recovery and take up the appeal for disposal as per law. We notice that the appellants are carrying out the process by which the size of two pipes at the place of insertion are welded through Swaging Machine. It is their submission that the process of welding one pipe to another to get desired length does not amount to manufacture in terms of Section 2(f) of the Central Excise Act. We notice that this identical issue, the Hon'ble Supreme Court has in the case of Bharat Forge & Press Industries Pvt. Ltd. also held that such process which did not bring into existence a new commodity does not amount to the process of manufacture for imposing duty liability. It is noticed that the Collector (Appeals) in respect of demands raised for earlier period has also upheld and dropped the proceedings and as a consequence, the criminal case launched against the appellants have also been dropped. Respectfully following the judgment of the Hon'ble Supreme

Court, we hold that the process undertaken by the appellants does not result into a process of manufacture of any new goods for the purpose of excisability and dutiability. Hence the impugned order is set aside and the appeal is allowed.