

Collector of Central Ex. Vs. Echjay Industries (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-19-1997

Reported in : (1998)(99)ELT347TriDel

Appellant : Collector of Central Ex.

Respondent : Echjay Industries (P) Ltd.

Judgement :

1. The Respondents classified bearing caps for jeeps in the classification lists effective from 1-3-1986 under Chapter Heading 73.80.90 (sic). They also claimed exemption under Notification 217/85, dated 8-10-1985. The classification was approved by the Asstt.

Collector. Superintendent of Customs and Central Excise during the scrutiny of the RT 12 Return for the month of March, 1996 observed that the Respondents have cleared bearing caps under Notification No. 217/85 under Chapter X procedure. The bearing caps were not parts of diesel operated Internal Combustion Engine and did not fall under Chapter 84 or 85. Since they were not eligible to avail exemption under Notification No. 217/85 demand notice for Rs. 27,368.63 was issued which was confirmed by the Assistant Collector who after recalculating the rate of duty at the rate of 20% held that Rs. 66,430/-is payable.

The Respondents during the proceedings produced certificates from Mahindra and Mahindra, Bombay mentioning that bearings caps are parts of the internal combustion engine which are diesel operated engines fitted in their jeeps. They

also requested that these bearing caps should be classified under Chapter Heading 84.90 as it had been wrongly classified under Heading 7308.90. They also submitted that their claim for considering bearing caps as part of diesel engine has been accepted by the Department subsequently while approving the classification lists of No. 173/83 and therefore goods are covered under Notification No.217/85.

2. Revenue are in appeal against the Collector (Appeals) order who held that there was a mistake both by appellants and manufacturer in classifying the product under Heading 73.08.93. These caps are classifiable under Chapter Heading 84.90 as parts of I.C. engines. He also held that it was not therefore correct to deny exemption to the Respondents. Revenue are in appeal against the Collector (Appeals) order allowing exemption under Notification No. 217/85, dated 8-10-1985. It is the contention of the Revenue that exemption of duty under notification is not applicable to goods classifiable under Heading 73.08. They have cited the case of Sundaram Fasteners v. C.C.E.(sic) reported in 1987 (32) E.L.T. 150 in support of their contention that demand can be raised within six months even after approval of classification under Section 11 A. In the circumstances goods have been classified under Heading 73.08.90 the benefit of Notification No.217/85 could not be given to them.

3. We have considered the matter. It is clear that goods were initially wrongly classified under Heading 73.08 instead of 84.09. The fact that these bearing caps are parts of diesel engine is not in dispute.

Notification No. 217/85, dated 8-10-1985 as amended allows exemption to parts of diesel oil operated internal combustion engines intended for use in the manufacture of diesel oil operated combustion engine.

Chapter X procedure is required in case of such use in place other than factory of production. The notification in other words grants exemption to parts of diesel oil operated internal combustion engine which are classifiable under Chapter Heading 84. The goods admittedly are classifiable under Heading 84.09, though these were initially wrongly classified under Heading 73.08. The question therefore is whether wrong classification would change the character of the goods. In other words

whether by classifying certain parts of diesel engines wrongly under Heading 73.08 instead of 84.09 would in law make the goods as other than parts of diesel engine classifiable under Heading 84.09. The parts of diesel engine remains parts of diesel engine and mere fact that during a certain period they were wrongly classified would not mean that these goods in fact are not parts of diesel engine falling under Chapter Heading 84.09. Department itself during subsequent period approved the classification of these goods under Heading 84.09.

Classifying them under different heading would not take the goods away from their legitimate parentage under Chapter Heading 84 to deny them the benefit of the exemption notification. Since goods fall under Chapter Heading 84,09 and during the material period Chapter X procedure was followed goods were entitled to exemption as correctly held by the Collector (Appeals). In view of this we do find any infirmity in the order of the Collector (Appeals). We therefore uphold the impugned order and reject the Revenue Appeal.

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