# B.H.E. Ltd. Vs. Collector of Customs

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**SooperKanoon Citation** : sooperkanoon.com/12969

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-03-1998

**Reported in** : (1998)LC43Tri(Delhi)

**Appellant** : B.H.E. Ltd.

**Respondent** : Collector of Customs

**Judgement** :

1. Shri R.K. Malhotra, Deputy General Manager informs that the Committee on Disputes had allowed M/s B.H.E.L. to pursue this appeal with the Tribunal. The Committee on Disputes in their Meeting held on 23-11-1995 had permitted M/s B.H.E.L. to pursue the appeal in CEGAT as per Item No. 26 of the Minutes of the Meeting.

2. M/s B.H.E.L. imported among others pipe clamps (made of steel other than stainless steel) and classified the same u/h Noi 7326.90 of the Customs Tariff and availed of the benefit of exemption Notification No.62/86-Cus., dated 17-2-1986. After the goods were cleared out of Customs charge, they filed a refund claim on the ground that the clamps were correctly classifiable u/h No. 7308.90 and were eligible for the benefit of Notification No. 86/86-Cus., dated 17-2-1986 (as amended) as they were structures and roofing parts of structures of iron or steel.

The Asstt. Collector of Customs (Refund) observed that as the appellants had no documentary evidence to substantiate their claim that the goods were parts of structures the reassessment could not be considered. He however, held that the effective rate of duty applicable for the goods under sub-heading 7326.10 of the Customs Tariff was lower than the one paid by the appellants and therefore, granted a refund of Rs. 21,68,898.20. Appellants filed an appeal with the Collector, Customs (Appeals), Madras who observed that the pipes with which the clamps were used were conduits to transmit steam and water to the required location. He confirmed the view taken by the Asstt. Collector (Refund).

3. We have heard Shri R.K. Malhotra, Dy. General Manager for the appellants and Shri R.S. Sangia, JDR for the Revenue. Shri R.K.Malhotra explained that when the steam was taken for the boiler to the turbine, pipes are used and the clamps specially made were used to support the pipes. The boiler turbine and the generators, he submitted, were parts of structures and therefore, in his view, the goods were correctly classifiable as parts of structures u/h 7308.90 of the Customs Tariff.

4. Shri R.S. Sangia, JDR referred to the facts of the case and submitted that the clamps even when specially designed could not be considered as part of structure as the boiler and the turbine were two separate goods and the clamps were only used for supporting the pipe coming out of the boiler and going to the turbine.

5. We have carefully considered the matter. We find that these specially made clamps were for supporting the pipes which are neither parts of the boiler nor of the turbine. They are used to inter-connect the two and were separate identifiable commodities. It could also not be said that the boiler and the turbine were part of same structures; depending upon the requirements they could be at a distance.

6. The Asstt. Collector, Customs had already extended the benefit of effective rate of duty and had sanctioned a sum of Rs. 21,68,898.20 out of the claimed amount of Rs. 97,71,576.20.

7. As we find that the appellants themselves had claimed assessment u/s.h. 7326.90 which had been agreed to by the Revenue and the benefit of effective rate of duty had already been extended in their favour and keeping in view the functioning of the clamps, we do not find any infirmity in the view taken by the lower authorities.

Taking all the relevant facts and consideration into account, we do not find any merit in this appeal and the same is rejected. Ordered accordingly.