

Collector of C. Ex. Vs. Crescent Metal Processing Works

Collector of C. Ex. Vs. Crescent Metal Processing Works

SooperKanoon Citation : sooperkanoon.com/13071

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-16-1998

Reported in : (1999)(111)ELT841TriDel

Appellant : Collector of C. Ex.

Respondent : Crescent Metal Processing Works

Judgement :

1. This is a departmental appeal against the order of the Collector of Central Excise (Appeals) dated 27-7-1990.

2. The question raised in the appeal relates to classification of slotted angles cleared by the respondents. Respondents had filed classification list classifying slotted angles under Heading 7210.20 and had claimed exemption under Notification No. 175/86 (as amended).

The Asstt. Commissioner by the order-in-original classified the item under Chapter Heading 9403.00. In order-in-appeal the Collector (A) reversed the Asstt. Commissioner's order and held that the products would more appropriately be classifiable under Chapter 72.

3. Ld. DR appearing for the department contends that in terms of Interpretative Rule 2(a) of the Central Excise Tariff Act, 1985 reference to any item in knocked down condition or in unassembled condition, would include a reference to goods in complete or finished form provided the items in incomplete or unfinished form bear

the essential character of finished or completed goods. In such cases reference to such goods whether in complete or finished form or in unassembled or disassembled form would not make any difference. In the instant case the respondents were manufacturers of slotted angles as also of steel furniture and parts thereof such as shelves, partitions, corner plates, etc., falling under Heading No. 9403. According to the department, having regard to Rule 2 (a) since slotted angles can be clearly used for the manufacture of steel furniture, the more appropriate classification would be under Heading No. 9403.00 as parts of steel furniture, as held by the Asstt. Commissioner in the order-in-original. Ld. DR therefore prayed for restoration of the order-in-original and setting aside of the Collector (A) order.

4. On behalf of the respondents Shri S.V. Kumble, Consultant and Shri S.M. Chauhan, Advocate appeared. It was their contention that under the scheme of the Central Excise Tariff, goods are required to be classified w.r.t. the form in which they are cleared from the factory and not on the basis of the end-use to which it may be put by the buyers. They contended that there was no dispute that the products cleared by them were slotted angles and specific heading is available in the tariff to cover the said product. At the material time slotted angle was covered under sub-heading 7210.20. Where a specific heading is available the same has to be preferred to a classification having a general description. They submitted that the Department's contention that slotted angles cleared by them would be classifiable under Heading No. 9403 by virtue of Interpretative Rule 2(a) was not based on the factual situation. Explaining the position further Ld. Consultant submitted that the respondents were also manufacturing and clearing slotted angles and slotted channels of various sizes, thickness and dimensions. He pointed out that slotted angles of higher thickness and larger dimensions, by their very nature, could not be used for making items of furniture. The fact that they were also manufacturing some items of furniture and some of the slotted angles cleared by them may also be used by the end-user for the manufacture of items of furniture would not make the entire clearance of slotted angles manufactured by them, parts of items of furniture. Rule 2(a) would not therefore be attracted in their case.

5. We have considered the above submissions. We observe from the records that the respondent's RT 12 returns showed that they had been producing and clearing simultaneously slotted angles under Chapter 72 as well as items covered under Chapter Heading 94.03. The Department's case is that since slotted angles are also capable of being used for making furniture, these can be taken to include parts of the finished items of furniture and in terms of Rule 2 (a) of the Interpretative Rules slotted angles also would come under Heading 94.03. We find that this point has been considered by the Collector (A) and he has observed that when the products are cleared under specific headings (in the instant case Heading No. 7210.20 - slotted angles) it would not be appropriate to rely on the Rules of Interpretation which are intended to cover situations where the classification is of goods of a general description. We also observe that the Collector (A) had referred to the Board's Circular No. 12/69 issued with reference to the old tariff in which it was clarified that slotted angles used for making various assemblies are not classifiable as steel furniture under erstwhile Item 40. Following the same Collector (A) had held that steel angles, though capable of being used as parts of steel furniture, would be more appropriately classifiable under the appropriate sub-heading of Chapter 6. We find that the respondent's submissions that the steel angles cleared by them were of different sizes and thickness and therefore not capable of being used as parts of furniture in all cases has some force. Further, we are also in agreement with the observations of the Collector (A) that when the 7. In view of the above, we uphold the order of the Collector (A) and reject the Department's appeal.

8. I agree with the above conclusion regarding the correct classification, I would only like to add that the Id. DR had referred to the Rules for the interpretation of the Schedule and it is a fact that the Rule 1 mentions inter alia that the classification shall be determined according to the terms of the headings and any relative section or chapter notes. Basically this Rule is a guiding provision indicating as to how this tariff has to be read in the first instance but the disputes regarding interpretation or application are apparently required to be resolved mainly in the light of subsequent Rules 2, 3, 4 and 5 as may be deemed appropriate in the facts of a given case; and in the present case since a specific heading is available it was required to be applied without reference to other Rules. The Collector (A) has therefore rightly

upheld the classification of the product. The Department's appeal is accordingly rejected as already announced in the open court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com