Anil Forging Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-17-1998

Reported in : (1998)(103)ELT252TriDel

Appellant : Anil Forging

Respondent : Collector of Central Excise

Judgement :
1. This is an appeal filed by the Appellants against the Order-in-Appeal dated 13-4-1989 passed by the Collector (Appeals), Bombay.

1.2 The issue involved in this appeal is whether the forgings manufactured by the Appellants are classifiable under Heading 72.08 or sub-heading 7308.90 of the Schedule to the Central Excise Tariff Act.

2. Arguing on behalf of the Appellants, Shri B.N. Sharma, Manager (Legal) submitted that the assessee manufactures forgings by hammer process and the forgings so manufactured require further machining to convert them into identifiable machine parts; that their forgings are roughly shaped pieces of iron and steel which merit classification under Heading 72.08 of the Tariff. He relied upon the decision in the case of Aravali Forging Ltd. v. C.C.E. - 1994 (70 E.L.T. 693 (Tribunal) in which it was held that forgings of steel up to the stag of proof machining is not classifiable under Heading 7308.90 of the Tariff am that sub-heading 7208.00 is appropriate for such forgings following the judgment of the Hon'ble Supreme Court in case of TISCO v. Union of India reporter in 1988 (35)

E.L.T. 605 (S.C.). He also referred to the Board's Circular No. 25/89 dated 8-10-1989 in which it was clarified that "Forgings which had been sub jected to processes up to and including the stage of proof machining whereb; they were only smoothened and made ready for final machining to shape then into machine parts were to be regarded as pieces roughly shaped under the ok Tariff Item 25 and also under Heading 72.08 with effect from 28-2-1986.

In view of the above, Board's telex instructions contained in F. No.139/69/86-CXA dated 4-6-1987 clarifying the specialised and restricted scope of 'pieces rough shaped' under Heading 72.08 on which the scope was based on HSN Ex planatory Notes and calling for classification of such forgings and forge products as were not covered by Heading 72.08 and were yet not final article of iron and steel under Heading 73.08, stands withdrawn. Pending classification disputes of the period 1-8-1983 to 27-2-1986 and 28-2-1986 to 29-2-1988, if any, should be finalised on the basis of above decision." The Manager (Legal also submitted that the word "rough" under sub-heading No. 72.08 indicate: only the State of Forging vis-a-vis the finished product ready for use.

He also showed the samples of both forged product and product after the process o machining had been carried out.

3. Countering the arguments, the ld. DR submitted that the produc manufactured by the appellants was not roughly shaped forgings but article of iron or steel and was, therefore, correctly classifiable under sub-heading 7308.90 of the Tariff. He also referred to the decision of the Tribunal in the case of Steel & Industrial Forgings Ltd. v. C.C.E.4. We have considered the submissions of both sides. Heading 72.08 of the Tariff at the relevant time read as "Pieces roughly shaped by rolling or forging of iron and steel not elsewhere specified. No evidence has been brought on record to probe that the forging manufactured by the assessee was machined one or it had gone beyond the stage of proof machining. On the other hand the assessee has produced the opinion of the Directorate General of Technical Development which reads as under : "Manufacture of machinery parts is carried out in two stages i.e.

(a) First stage, casting or forging (b) second stage machining the forging/casting. Components/parts which are subjected to heavy stress, strain, high speed or essentially to possess qualities i.e.

tensile strength, ductility etc. are produced by forging from steel having the requisite metallurgical properties. The others are the castings and are cast from pig iron. In both these cases, initially the product attains only a rough shape to suit the second stage i.e.

machining to obtain the desired shape and dimension and close tolerances.

Manufacture of forging is a process of heating of steel to pre-determined temperature to make plastic enough to adopt the required shape by hammering between the dies or gradual shaping by using heavy presses. The product obtained from these process gives the specified shape only. The dimensional accuracy of forging is achieved during the second stage which is known as the machining process which makes it perfectly suitable as a component of the machinery and to stay fit while in operation." 5. We also observe that even in Steel and Industrial Forgings Ltd. case (supra), relied up by the ld. DR, the Tribunal has allowed the appeal filed by the Appellants therein as the Respondent had directed the SDR to concede the case in view of the Ministry's circular. In view of these facts and circumstances, the forging manufactured by the Appellants is rightly classifiable under Heading 72.08 of the Tariff.

Accordingly the appeal filed by the Appellants is allowed.