

Collector of C. Ex. Vs. Bharat Metal Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-30-1998

Reported in : (1999)(105)ELT494TriDel

Appellant : Collector of C. Ex.

Respondent : Bharat Metal Industries

Judgement :

1. The Department has filed this appeal against the order of the Collector of Central Excise (Appeals), Tiruchirapalli dated 25-9-1990.

The issue relates to eligibility for the concessional rate of duty of Rs. 1,260 per MT under Notification No. 178/88 as amended for brass sheets and circles of thickness exceeding 0.15 mm and falling under Chapter sub-heading 7409.20.

2. Appellants are manufacturers of brass sheets and circles falling under Chapter 7409.20 and they were clearing their manufactured goods @ Rs. 1,260 per M.T. pursuant to Notification No. 178/88 as amended by Notification No. 68/89, dated 1-3-1989. After the introduction of the 1990-91 Budget they filed a Classification List incorporating the new Special Excise Duty Notification No. 93/90, dated 20-3-1990. The Assistant Collector modified the Classification List inasmuch as he deleted reference to Notification No. 178/88 and substituted it by reference to Notification No. 67/89, dated 1-3-1989 which provided for a rate of duty @ Rs. 4,725 per M.T. No SCN was, however, issued to the appellants for (nor) any personal hearing before making the modification. Appellants contested the

modification made by the Assistant Collector contending that Notification No. 67/89, dated 1-3-1989 which mentioned an effective rate of duty without any condition was applicable only to primary producers of copper from copper ore whereas Notification No. 178/88 was a conditional Notification applicable to manufacturers of copper sheets and circles including brass sheets and circles out of duty paid inputs. They also contended that since they were buying copper scrap from the market which was deemed to be duty paid in terms of Explanation appended to Notification No. 178/88 and since the appellants were not primary producers and since neither they nor any other person had taken any credit of duty on the said inputs, all the conditions of Notification No. 178/88 were satisfied and therefore they were eligible for the concessional rate prescribed under Notification No. 178/88. Further, Notification No. 178/88 covered Heading 7409. Since sub-heading 7409.29 applied to brass sheets and circles, their products were fully covered by Notification No. 178/88.

3. Collector (Appeals) held that whereas Notification No. 178/88 was a conditional Notification, Notification No. 67/89 was an unconditional Notification and Notification No. 67/89 applied to the category of assesseees who did not satisfy the conditions stipulated under Notification No. 178/88. Referring to Sl. No. 4 of the Table to Notification 178/88 as amended by Notification No. 68/89, Collector (Appeals) observed that the amended Notification covered Heading Nos.

74.09 and 74.10. These headings covered copper plates, sheets (including circles), strips and coils with effective rate of duty of Rs. 1,260/- per M.T. Heading No. 74.09 also covered copper plates, sheets and strips of a thickness exceeding 0.15 mm covered by sub-heading 7409.10; copper zinc base alloys (7409.20); copper-tin base alloys brands (7409.30) etc. After its amendment by Notification No.68/89, Notification No. 178/88 covered the complete Heading No. 74.09 including sub-heading 7409.20. The Collector (Appeals), therefore, held that the modification made by the Assistant Collector was not correct.

4. Ld. JDR arguing in support of the Departmental appeal submitted that as per the wording of the entries relating to Sl. No. 4 of the Table to Notification No. 178/88, as amended, the concessional rate was available specifically only to

"copper sheets and circles" and not to any alloys of copper or brass sheets and circles. He submitted that the Notification relating to brass sheets and circles was Notification No.96/88, dated 1-3-1988 as amended in which under Entry No. 8, specific mention of "copper zinc base alloy (brass)" attracting a rate of duty of Rs. 4725 per M.T. has been mentioned.

5. In cross objections filed by the respondents it has been contended that the appellants had filed their Classification List classifying the sheets and circles of brass under sub-heading 7409.20 at the concessional duty rate of Rs. 1,260 under Notification No. 178/88. The Assistant Collector had without issuing a SCN modified the rate of duty applicable to items covered under Notification No. 67/89. Relying on the Karnataka High Court decision in Kemwell (P) Ltd. v. Union of India -1987 (31) E.L.T. 669 they have contended that an opportunity of being heard was a condition precedent before making a modification in the classification list. The unilateral action of the Assistant Collector in modifying the classification list without giving an opportunity to appellants was, therefore, incorrect. As regards the rate of duty applicable to sheets and circles of brass (copper-zinc base alloys) falling under sub-heading 7409.20 respondents contended that they had purchased waste and scrap of copper and brass from the market and utilised them for manufacture of sheets and circles of brass (copper and zinc base alloys) falling under sub-heading 7409.20. Since the inputs were deemed to be duty paid items in terms of Explanation No. 2 of Notification No. 178/88 as amended, they were fully eligible to the concessional rate of duty under the said Notification. Referring to the description of the goods given in the Table annexed to Notification No.178/88, Id. Counsel submitted that Sl. No. 4 thereof related to Heading Nos. 74.09 and 74.10 and the description of goods showed them as "copper plates, sheets (including circles), strips and foils" with Rs. 1,260/- as the rate of duty. As against this, Sl. No. 9 to the Table annexed to Notification No. 67/89 specifically mentioned copper plates, sheets and strips made of "copper zinc base alloys (Brass)" against sub-heading No. 7409.20, "copper-tin base alloys (bronze)" against sub-heading 7409.30 and "other copper alloys" against subheading 7409.90 all of which were assessable @ Rs. 4,725 per M.T. Respondents have contended that reference to main Heading 74.09 against Sl. No. 4 of Notification No. 178/88 would cover all goods placed under its sub-headings in the Central

Excise Tariff Act. The sub-headings included "copper-zinc base alloys (brass)" against sub-heading 7409.20 and "copper-tin base alloys (bronze)" against sub-heading 7409.30, among others. If the intention of the Government was to include only "copper sheets and circles" in the said entry against SI. No. 4, the Table would have mentioned Heading No. 7409.10 of the CETA denoting the item as "sheets and circles of refined copper". They have also relied (r)n Section Note 4 to Section XV which provides that unless the context otherwise requires reference to base metals included their alloys. Further, Section Note 3 provided that alloys of base metals are to be classified as an alloy of the metal which predominated by weight over other metals. Respondents have also contended that Notification 67/89, which according to the Department was applicable to the facts of the case, was a Notification which specifically mentioned several sub-headings under main Heading 7409 and contained no conditions, unlike Notification 178/88 as amended by Notification No. 68/89. They have relied on the Tribunal decision in CCE v. Metrowood Engg. Works, 1989 (43) E.L.T. 660, to contend that where in a taxing statute two interpretations are possible, the interpretation which is favourable to the asses-see should be taken.

7. The Department's case is that the appellant's products, viz., brass sheets and circles are covered only by entries against SI. No. 9 of Table to Notification No. 67/89 and therefore the rate of duty of Rs. 4,726 per M.T. specified under that Notification would apply and not the rate of duty of Rs. 1,260 per M.T. as provided in Notification No.178/88 as amended by Notification No. 68/89 since SI. No. 4 of Table thereof covered only "copper plates, sheets and circles" and not any "copper plates, sheets or strips made of copper-zinc alloys (brass)".

It is settled legal position that in interpreting the Chapter sub-headings in the Central Excise Tariff Act, the relevant Section Notes/Chapter Notes have to be kept in view. We find from a combined reading of Section Notes 3 and 4 of Section XV as it stood at the relevant time, it was provided that any reference to any base metal would include reference to alloys thereof and any alloy of any base metal will be classifiable as an alloy of the metal which predominates by weight over the other metals. Further, Chapter Note 1(b) of Chapter 74 defined 'copper alloy' as a metallic substance other than unrefined copper in which copper predominated by

weight. There is no dispute that brass is an alloy of copper in which copper predominates by weight.

Bearing in mind the aforesaid Section Notes and Chapter Note, it will be incorrect to hold that the goods described as "copper plates, sheets (including circles), strips and foils" coming under Heading Nos./sub-heading Nos. 74.09 and 74.10 shown against Sl. No. 4 of Table to Notification No. 178/88 will not take in brass sheets and circles.

The fact that another Notification viz. Notification No. 67/89 also contains entries which describe the goods in terms of further sub-headings of Heading 74.09 [7409.20 copper-zinc base alloys (brass)] does not make the coverage of Entry 4 of Table to Notification No.178/88 restrictive or limited. Further, since Notification No. 178/88 and Notification No. 67/89 were concurrently in force, rules of harmonious construction demand that both Notifications are given effect to. In such a situation, it is also necessary to give to the assessee the benefit of the more favourable notification.

8. Accordingly, we are not inclined to allow the Departmental Appeal.

The same is hereby dismissed.

9. I entirely agree with my learned colleague. However, I would like to add a few lines to elaborate some aspects. There is no doubt that in the market, copper and copper articles are treated as distinct and distinguishable from brass and articles of brass and consequentially, as a matter of trade practice in common parlance, they are treated as different commodities. However, for central excise purposes, we have to be guided by the concepts as incorporated in the law by way of deeming fiction or otherwise.

10. In respect of notifications, it is observed that there are various types of notifications including some which take into account the common parlance or trade practice and others which take into account the concepts built in the tariff and the descriptions, composition or definitions etc. incorporated in section notes or chapter notes. In the present case, the notifications in question specifically refer

to certain chapters and tariff headings and therefore, automatically bring in their wake the heading description and chapter notes. Since Chapter 74 which covers 'copper and articles thereof includes copper alloys and a sub-heading specifically mention 'copper zinc base alloy (brass)', therefore, the headings will have to be interpreted and applied with reference to the chapter notes and a notification which refers to sub-headings will have to be interpreted and applied accordingly.

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