Detriv Instrumentation and Vs. Collr. of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-31-1998

Reported in : (1998)LC129Tri(Delhi)

Appellant : Detriv Instrumentation and

Respondent : Collr. of Cus.

Judgement :

1. M/s. Detriv Instrumentation & Electronics Ltd. imported the goods which they described in the Bill of Entry as Copper Clad Wire. For customs duty purposes, the goods were classified under Heading No.73.15 of the Customs Tariff. For countervailing (CV) duty, the classification was claimed under Item No. 25(14) of the Central Excise Rules. The customs assessed the goods for CV Duty purposes under Item No. 68 of the Central Excise Tariff. The goods were cleared on payment of duty and subsequently the appellants filed a refund claim, claiming that the correct classification for CV duty purposes should have been under Item No. 26AA of the tariff with benefit of Notification No.116/81-C.E., dated 12-5-1981 with regard to the concessional rate of special excise duty. The claim was rejected by the Deputy Collector of Customs as unsubstantiated. On appeal, the Collector of Customs (Appeals), Bombay, confirmed the view taken by the adjudicating authority.

2. The appellants have prayed for decision on merits on the basis of their written submissions. On behalf of the respondents /Revenue, Shri M.C. Sharma, CDR, is present and referred to the arguments taken by the appellate authority in

classifying the goods under Item No. 68 of the erstwhile Central Excise Tariff.

3. We have carefully considered the matter. The goods were described in the bill of entry as copper clad wire in which the ferrous metal content was predominant. The appellants had produced a certificate indicating the material composition of the wire which had been referred to as Dumet Wire, Diameter 2.00 mm. As per the material composition the core material consisted of nickel 41 to 43%, ferrous metal 56 to 58% and manganese 0.8 to 1.1%. The core material with the above composition was coated with copper and the copper content was indicated as 26 to 30% by weight.

4. Under Item No. 25(14) of the erstwhile Central Excise Tariff iron or steel wire, whether or not coated but not insulated were covered by that item. It shows that the iron or steel wire even if coated could remain classifiable under Item No. 25(14). It has been explained that the wire means cold drawn products of solid section of any cross-sectional shape, of which no cross-sectional dimension exceeds 13 mm.

5. Item No. 68 of the erstwhile Central Excise Tariff was a residuary entry and classification under the Item No. 68 could only be considered when the goods were not otherwise classifiable under the specified tariff entry. In this case, core material had a predominant ferrous material. The coating on the alloy steel wires was that of the copper and there is nothing on record to show that in common parlance or in trade understanding the goods imported could not be considered as a wire.

6. The appellants have referred to the earlier decision of the same appellate authority in their own case where the Collector of Customs (Appeals), Bombay, had held that the assessment of CV Duty in respect of the copper coating wire (Dumet Wire) under Central Excise Tariff Heading No. 68 was not correct. There is nothing on record to show that this order had been challenged or the view taken by the appellate authority had been set aside by any higher forum.

7. In the case of CCE v. M.P. Electricals Ltd., 1994 (73) E.L.T. 262 (S.C.), the Hon'ble Supreme Court with regard to copper and aluminium strips had observed

that the copper and aluminium strips even though insulated remained copper and aluminium strips, and the Tariff Item No.68 which was for the goods not elsewhere specified was inapplicable.

8. Taking into account the above discussion and the submissions made by the appellants, we do not agree with the view taken by the learned Collector of Central Excise (Appeals) that the goods in question were classifiable under Item No. 68 of the erstwhile Central Excise Tariff.

The appellants have contended that the goods in question for CV duty purposes were classifiable under Item No. 26AA of the Central Excise Tariff which was specifically merged with Item No. 25 of the said Tariff. They had claimed that the goods were covered by the tariff description as iron or steel wire whether or not coated but not insulated. In the facts and circumstances of the case, we agree with the view canvassed by the appellants.

9. As as result, the appeal is allowed. The refund, if any, will be subject to the law of unjust enrichment.