

Perfect Forgings Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-28-1998

Reported in : (1999)(112)ELT142TriDel

Appellant : Perfect Forgings

Respondent : Collector of Central Excise

Judgement :

1. These four appeals filed by the assessees relate to correct classification of grinding media balls. The Commissioner has held that their correct classification is 7308.90 while the appellants contended that they were correctly classifiable under 7208. At the relevant time, these headings read as under: - "7208. Pieces roughly shaped by rolling or forging of iron or steel, not elsewhere specified." 7308 Other articles of iron or steel 7308.10 - Bottom stools, stirring or poking rods, splash Nil plates and troughs as are used in the factory of production in the manufacture of steel ingots and melted either during or [later] such use in the said factory 7308.20 - Chain and parts thereof, of iron or steel 15% 7308.30 Nails, tacks, drawing pins, corrugated nails, 15% staples (other than those of Heading No. 83.05) and similar articles of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper - Rivets, cotters, cotter-pins, washers (including spring" washers) and similar articles of iron or steel: 7308.41 - Circlips 20% 7308.49 - Other 15% 7308.50 - Sewing needles, knitting needles, bodkins, crochet 15% hooks, embroidery stilettos and similar articles, for use in the hand, of iron or steel; safety pins and other pins of iron or steel, not elsewhere specified or

included 7308.60 - Spring and leaves for springs, of iron or steel 15% 7308.70 - Stoves, ranges, grates, cookers other than pressure 15% cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-ririgs, plate warmers and similar non-electric appliances, and parts thereof, of iron or steel; radiators for central heating, not electrically heated and parts thereof, of iron or steel ; air heaters and hot air distributors (including 7308.80 - Sanitaryware and parts thereof, of iron or steel 15% 7308.90 - Other" 2. The Adjudicating Authority has mainly relied upon Note 6 to Chapter 84 which is reproduced below for reaching the finding that the classification is under Heading 7308 :- "6. Heading No. 84.82 applies, inter alia to polished steel balls, the maximum and minimum diameters of which do not differ from the nominal diameter by more than 1% or by more than 0.05 mm, whichever is less. Other steel balls are to be classified in heading No. 73.08." 3. The aforesaid Chapter Note was taken by the Adjudicating Authority to mean that Heading No. 84.82 applies to polished steel balls by treating them as part of the machinery. The other steel balls are classifiable under Heading 7308. The Adjudication order also gave a finding that steel balls in question are not roughly shaped as they do not have to undergo drastic machining before they are put to use. Order also notes from the purchase order placed by Obra Thermal Power Station that they should have a diametre of 50 mm with a tolerance of 1.5 mm.

i.e., 2.5% only.

4. Arguing the appeal, Shri Gopal Parshad submits that the goods in question are forgings and are correctly classifiable under 7208 as it stood during the material period i.e., before heading 7326 was introduced in the Central Excise Tariff with effect from 1-3-1988 specifically providing for classification of steel grinding balls under 7326.11. He also submits that reliance placed by the Revenue on Note 6 to Chapter 84 is not correct as Notes under that Section/Chapter are relating to the goods mentioned in that Chapter or Section only in view of Interpretative Rule 1. He also submits that in any event, the said note did not cover roughly shaped steel balls as that Note was in the context of polished steel balls and did not cover unpolished steel balls. The note covers steel balls which have attained the quality of machinery parts. Therefore, that note would cover only polished steel balls of

different diametres.

5. Shri Gopal Parshad also submits that even if the classification is held to be under 7308 no duty was liable to be levied as they were eligible for exemption under Notification No. 208/83 as the said notification exempts products covered by Chapter 72 or 73 or 84. With regard to sub-heading 73.08 not being mentioned in the Table to Notification No. 208/83, Shri. Gopal Parshad clarified that omission of sub-heading 7308 does not make a difference, as Chapter 73 as a whole is mentioned in the body of the notification. Further, the Tribunal has held in *Tigrania Metal 1994 (73) E.L.T. 76* that ship breaking scrap would be eligible for exemption under Notification No. 208/83 even though sub-heading 72.15 under which such scrap is liable to duty was not specified in the table to the notification. Heard Shri Saran, SDR who submits that classification of the steel balls in question was, in terms, covered under Chapter Note 6 to Chapter 84. Therefore, the impugned order is correct. He submits that the appellants are also not entitled to exemption under Notification No. 208/83 as sub-heading (73.08) under which these goods are correctly classifiable is not mentioned in the exemption notification. He also refers to the finding in the Adjudication Order that steel balls in question are not rough forgings requiring drastic machining.

6. We have perused the records of the case and have considered the submissions made by both the sides. We find that the impugned orders have been made in terms of Note 6 to Chapter 84. We also find that the said note makes a distinction between the steel balls which are classifiable as parts of the machinery under Chapter 84 and 7308 as other articles of iron and steel. We further observe that the articles covered by 7308 are also finished products generally like Stoves, ranges, grates etc. and not rough and unfinished products. Therefore, scope of note is that the steel balls are finished articles, and they either go as parts of the machinery (84.82) or as other articles of Iron & Steel (73.08). They are not to be classified as forgings i.e., based on the method of production. The impugned orders clearly give a finding that steel balls in question are not rough forgings. Therefore, they would be covered by Note 6 of Chapter 84. We are unable to agree with the argument that that portion of the Chapter Note which relates to classification under 7308 could not be applicable as the note has been given

under Chapter 84 and not under Chapter 73. The Note is making a distinction between the steel balls which are to be classified under Chapter 84 and under Chapter 73. This note is, therefore, relative to Chapters. Either it could have been split into two notes and incorporated under both the headings or given more conveniently, as has been done, under one Chapter as in the instant case. It is difficult to accept that classification notes are valid only when they are given under the concerned Chapters and not when they are given in a combined manner.

7. We are also not able to accept the argument that exemption under Notification No. 208/83 is available even though sub-heading 7308 products are not mentioned in the table to the said notification because Chapter 73 is mentioned in the body of the notification. The notification exempts "goods of the description specified in Column (3) of the Table hereto annexed... and falling under Chapter 72 or 73 or 84..." And the table specifies the goods sub-headingwise. Therefore, only the goods specified in the table will be eligible for the exemption and not all goods falling under Chapter 72,73 or 84. The analogy with ship breaking scrap is not appropriate. In respect of the ship breaking scrap the goods are covered under the eligible tariff sub-headings, even though duty is paid under sub-heading 7215. That is not the case in the present appeals.

8. Shri Gopal Parshad also submitted that the adjudicating authority has by mistake mentioned duty demand as Rs. 21,81,712.13 as against the correct amount of Rs. 34,085.60 in Order No. 14-MP/COLLR/90, dated 14-9-1990 in respect of M/s. Perfect Forgings (Appeal No.E/3865/90-B1). He submits that demand should be restricted to the amount as mentioned in the show cause notice. Upon this, Shri Saran clarifies that the higher amount has been mentioned on account of clerical error, taking value in place of duty. It is, therefore, ordered that duty demand in the aforesaid case shall be only Rs. 34,085.60.

9. In the light of the foregoing, the appeals fail and are rejected subject to the aforesaid modification of the duty demand.