

Servall Engineering Works Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Oct-06-1998

Reported in : (1999)(105)ELT296Tri(Chennai)

Appellant : Servall Engineering Works

Respondent : Commissioner of C. Ex.

Judgement :

1. This is an appeal against Order-in-Original No. 20/98, dated 13-9-1998 passed by Additional Collector of Central Excise, wherein a demand for differential duty on Drive & Transmission section of Paper Making Machinery (8439.00) has been confirmed for Rs. 1,96,875/- for the period from 11-4-1989 to 13-5-1989 and a penalty of Rs. 2,000/- imposed on appellant. The show cause notice is dated 18-10-1989.

2. Briefly, Assistant Collector of Central Excise approved Classification List No. 146/88-89 w.e.f. 1-7-1989 under 8439.00 and Part-II price list on 7-6-1988. Goods were cleared Paper Pulp making machinery in SKD condition on 5 GPs and RT 12s covering these were finally assessed accepting duty paid. After investigations by Preventive Section, show cause notice (supra) seeks : (a) reclassification of Drive & Transmission section of the paper under 8483.00; and (b) inclusion of Rs. 3,80,000/- (Technical know-how charges) in assessable value of de-inking plant supplied in late 1988 (Duty involved Rs. 59,850/-). The former mainly consisted of Pulleys, gear box, shafts, Bearings & gear.

1. Issues of classification and valuation for different periods can-not be clubbed together in one show cause notice, particularly as suppression of facts is alleged for valuation issue but not for classification issue.

2. Proper Officer to reclassify is Assistant Collector and not Additional Collector.

3. Classification issue would be decided by Additional Collector in his capacity as Deputy Collector & appeal would lie before Collector (Appeals), not CEGAT. 4. Since on classification facts regarding goods are same (no new facts emerged) therefore approved classification list cannot be reopened.

6. Drive & Transmission Section is not classifiable under 8483.00 in view of Note 4 under Section XVI. Instead, under 8483.00 in terms of Note 2(b) of Section XVI; and 7. Technical know-how charges were collected on behalf of proposed company Serval Engineering consultants and there is no suppression of facts.

4. Heard learned JDR Shri S. Kannan who reiterates Order-in-Original and submits that the issue of classification is covered by Final Order Nos. 1593 to 1596/98, dated 17-8-1998 of this very Tribunal and which supports the impugned order. Regarding valuation, he submitted that M/s. Serval Engineering Consultants was never incorporated and no evidence is led to show that the amount collected by appellants was passed on to them with interest. Since appellants did not disclose such additional collection, they suppressed it with intention to evade.

5. We have carefully considered the arguments on both sides and records of the case and our findings on the seven issues raised by the appellant is as follows: 1. A show cause notice is issued alleging contravention of law to put the affected parties to notice. It may contain alleged infractions of one or more laws. There is nothing in the Central Excise Act or Rules which prohibits a single show cause notice to be issued on questions of classification for one set of clearances and on valuation for another set, and for different periods. As long as allegations are clearly worded and evidence supporting them is explained therein, the notice is not defective. Therefore, we cannot accept learned Consultant's plea on this issue.

2. On jurisdiction of proper Officer to decide on reclassification also, we cannot agree to the pleas made. Under Rule 6 of the Central Excise Rules, any superior officer can always exercise the powers of a junior officer. Therefore, if the Additional Collector has adjudged the matter, even though normally the Assistant Collector is the primary officer to decide classification and valuation, it cannot be said that the impugned order is passed without jurisdiction. On the contrary, the superior and senior officer is expected to apply his considerably more developed expertise and experience to the matter. This also applies to their plea that Additional Collector could have adjudicated as Deputy Collector.

3. We do not agree that an approved classification cannot be reopened if the goods are the same. Classification involves application of tariff descriptions and chapter/section notes to a set of goods. In the instant case, the dispute is between applicability of Note 4 of Section XVI & Note 2(b) thereof or otherwise, leading to two possible classifications. If there is an error alleged (and if so found) in applying the correct sub-heading in the earlier approval of classification list, nothing estops Revenue from re-examining the same by putting the party to notice.

4. It is also not correct to say that in the impugned order duty has been demanded without reclassification. The show cause notice seeks reclassification from 8439.00 to 8483.00 and goes on to demand the differential duty arising out of this. The impugned order first discuss at para 10 the classification of the products and then only confirms the differential duty demand in para 12. We do not find any infirmity or inconsistency in this approach.

5. Considering the classification of the product under CETA, 1985, we find that admittedly, these consist mainly of Gear and Gear boxes, Shafts, Pulleys & Wheels. We find that Heading 84.83 contains a specific description listing each of these parts. We also find that as per Note 2(a) to Section XVI, since there is a specific heading covering these parts, they are to be classified thereunder and not in relation to the main machine viz. paper pulp making machinery -transmission section. Note 2(a) applies, hence there is no need to proceed to Note 2(b). We find that a similar issue was decided by this Tribunal in the case of Venkatachalapathy Industries vide Final Order Nos. 1593 to 1596/98, dated 17-8-1998 wherein it was

held as follows : "5. We have carefully considered the arguments on both sides and records of the case. In this case, it is not disputed that the 5 items under dispute are parts of looms. The Heading 84.83 reads as under : "Transmission shafts (including can shafts and crank shafts) and cranks; bearing housings and plain shafts bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)".

6. On a plain reading thereof, we find that items at S. No. 1, 2 and 5 of which are various kinds of shafts which transmits power in the looms are clearly covered by the expression 'transmission shafts' in the tariff description above. Further more, the item No. 3 being 'Gear Wheels' are covered by the expression "gears and gearing" in the said sub-heading. We also find that the remaining Item No. 4 viz. 'Pulleys and Wheels' are also covered under the expression "fly wheels and pulleys, including pulley blocks". Therefore, it is clear that each of these 5 items is specifically described under the Heading 84.83.

"2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of Heading No. 84.84,85.44,85.45,85.46 or 85.47) are to be classified according to the following rules : (a) Parts which are goods included in any of the headings of Chapter 84 or Chapter 85 (other than Heading Nos. 84.09, 84.31, 84.48,84.66,84.73,84.85,85.03,85.22,85.29,85.38 and 85.48) are in all cases to be classified in their respective headings." 8. A plain reading thereof shows that since, as seen above, these goods are included under Chapter Heading 84.83 and that this heading is not excluded under the said note, therefore as per this note, all these parts have to be classified under this heading itself which would be in the "respective-headings". Since 2(a) clearly applies, therefore we cannot proceed to Note 2(b) at all and the learned Collector (Appeals) reliance on Note 2(b) in the impugned order is therefore clearly misplaced." We find that as that order also concerns similar items viz. Shafts, Gearings and Pulley for transmission (though of a textile machine) and the principle involved in classification is the same, therefore the ratio thereof is squarely applicable to this case also. Hence, the impugned order has correctly classified them under 8483.00 and appellants reliance on Note

2(b) supra is clearly misplaced. Since the demand is within 6 months, it is also not time barred.

6. With respect to the valuation matter, we find that it is not material if the appellants collected the charges on technical know-how on behalf of Servall Consultants and that too later. There is no evidence led in the appeal to show that (a) M/s. Servall Consultants etc. existed during the material period and that the monies collected was immediately passed on to them without interest, or at a later date with interest. We, therefore, conclude that these additional amounts remained with the appellants. It is now a well settled law that technical design and know-how charges have a clear nexus to manufacture of goods. Indeed, without it the goods cannot be manufactured.

Therefore, their cost/ charges are includible in the assessable value of the goods. Since the appellants received these additional considerations but did not disclose it to the department, though they were required to do so, therefore they have suppressed these facts. By keeping this money with themselves without disclosure they have shown their mala fides. Hence extended period has been rightly invoked.

7. In view of the aforesaid findings, we do not find any infirmity in the impugned order that compels us to interfere with it. As a result, there is no merit in the appeal and it is accordingly dismissed.

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