

V. Pla Products Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-09-1998

Reported in : (1999)(106)ELT194TriDel

Appellant : V. Pla Products

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal filed against the order-in-original dated 30-4-1991 passed by the Addl. Collector, Central Excise, Pune.

alia, that they are a manufacturer of plastic articles and were availing the exemption under Notification No. 53/88-C.E., dated 18th March, 1988. Since all articles manufactured by the appellants were of plastic and exempt from duty they were not required to take out L-4 licence and follow the procedure prescribed in the Central Excise Rules.

4. M/s Sandvik Asia Ltd. purchased wrenches called Allen Keys from M/s.

Kohinoor Engineers, Pune who were the authorised dealers. The duty on these wrenches which are high tensile screw drivers was paid under sub- heading No. 8204.00.

5. These duty paid wrenches were sent to the appellants who fixed a plastic moulding to facilitate easier handling. During the process of this, HDEP moulding, the trade mark of M/s Sandvik Asia Ltd. was also embossed on these handles.

6. They have further submitted that M/s. Sandvik Asia Ltd., supply the purchased wrenches to their customers along with the products on which these screw drivers are used as well as separately. Some are sold with handles and some without. As far as M/s Sandvik Asia Ltd. was concerned, this was a bought out article and no excise duty was paid again when sold to its customers. No Modvat credit was taken and no duty was paid. This has been accepted by the department.

7. The appellants have also stated that a show-cause notice was issued on 26-11-1989 w.r.t. Chapter 8202.10 (upto Feb., 1988) and Chapter 8207 from March, 1988 onwards for screws cleared by them during the period from 1-10-1987 to October, 1989. Penalty imposition was proposed and Proviso 1 to Section 11A of the CESA, 1944 was invoked. They also stated that written reply was filed.

8. They have further stated that the Id. Collector has confirmed the demand on the appellants. Hence this appeal.

9. The appellants have contended that fixing a plastic handle to a wrench does not change its classification; that the moulding of a handle does not amount to manufacture. Reliance is placed in the case of Lt. Governor, Delhi and Ors. v. Ganesh Flour Mills Co. Ltd. - 31 STC 354 (S.C).

10. Ld. DR drew attention towards the impugned order and emphasised that the assessee is not merely a manufacturer of plastic grips. The HDP grip is moulded on to the key and not merely fitted. What the assessee has cleared from the factory are the keys and not merely plastic grips. The product which is sent by the suppliers as per invoices is classifiable as wrench under C.H. 82.04 and the product which is cleared by the assessee is a tool holder classifiable under C.H. 82.07. In view of this the Notification No. 53/88-C.E., dated 1-3-1988 referred by the assessee is not applicable to him. The trade notices referred to by the assessee are applicable to the plastic products only. Whereas what the assessee is manufacturing are Allen Keys, hence trade notices are not applicable to him.

11. We have considered the above submissions. We observe that the whole case is required to be reconsidered by the authorities below. First and foremost it is the factual aspect which is to be re-examined inasmuch as it is required to be

ascertained as to what is the identity of the goods and what was the condition in which the goods were presented for assessment and cleared and how they were known in the trade and actually marketed; what was the nature of the work of job relationship between M/s. Sandvik Asia Ltd. and the appellants M/s. V. PLA Products i.e. whether a complete job work resulting in coming into existence of a new product was being done at the appellants' end or only a part job was done and it is the former which completed the product and sold it.

The appellants have mentioned inter alia that M/s. Sandvik Asia Ltd. were supplying the 'wrenches' to its customers along with the products on which these 'screwdrivers' are used as well as separately - Some are sold with handles and some without. It is essential to use correct terms of phraseology as the item has been variously described as 'wrench', 'keys', 'screwdriver' and tool holder. Therefore, it was necessary first to determine what was the product(s) with which we are concerned and it is also important to record a specific finding about the exact description of the item(s) in the form in which it was cleared by the appellants in which it was ultimately sold. It is all the more important as the descriptions given are rather vague and this is a dispute on facts as well as on legal position. It is necessary on the part of the original authorities to indicate as to on what basis it has been mentioned by the Additional Collector that the assessee is not merely manufacturing plastic grip and has cleared from its factory the 'keys' in the nature of 'tool holders'. It is necessary to indicate the evidence in view of the appellants assertion that all articles manufactured by them are of plastic. In other words, both the parties are required to substantiate their respective contentions and the Department is required to show that the assessee is manufacturing and marketing the Allen Keys (as a whole) which were meant for being supplied with milling cutters and were not articles in the nature of general use screw drivers. Since the Addl. Collector has recorded his findings without indicating clearly the basis thereof, the order, in a manner of speaking, is a non-speaking order.

12. In view of the above position, we set aside the same and remand the matter for de novo consideration of all the issues and aspects with the direction that an opportunity may be given to the appellants to be heard in the matter before final order is passed as already announced in the open Court.

