

Jamshedpur Engineering and Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-1984

Reported in : (1984)(17)ELT175TriDel

Appellant : Jamshedpur Engineering and

Respondent : Collector of Central Excise

Judgement :

1. This appeal has been filed pursuant to a direction of the Bench while hearing Revision Application dated 30-3-81 and registered as appeal No. ED(SB)(T) A. No. 475/81-B since two appellate orders were concerned. The case was heard at length and we are passing a separate order dealing with the first of the two orders.

2. This dispute is in respect of Cast Iron and Cast Steel products cleared without payment of duty due under Item 68 during the period 1-1-79 to 18-4-79. Citing the decision of the Government of India in order No. 888/78 relating to Bharatya Electric Steel Co. Ltd. and some other judgments of the Supreme Court, the appellants contested the demand. However, the Assistant Collector decided that the cast iron and cast steel rolls were machined/polished after completion of such finishing process and were shaped/sized according to the specifications and orders of the customers and, therefore, the order of the Government that castings should be assessed, after the finishing process is completed i.e. the crudeness of the casting is removed, is not applicable. He held that the products that emerged after machining/polishing were not the original castings but machine parts and after they cleared the rolls on payment of duty at the appropriate rate for Tariff

Items 25 and 26AA, duty was payable by the appellants on the tinned and machined parts at the time of clearance again under Tariff Item 68. He also held that the goods were removed not only without payment of duty but even without being assessed under Tariff Item 68. Rule 9(1) was contravened as this fact was suppressed by not showing these turned out machine parts in the classification list as per proviso (a) of Rule 10(1) which is applicable in Rule 9(2) and the demand was legal being within 5 years. They have contravened Rule 173Q also. He thereupon demanded duty but imposed no penalty as the main point of dispute was pending before the Appellate Collector. In his order dated 26-2-81, the Appellate Collector observed that the contentions that the appellants have to do a lot more of machining work on the cast rolls before making them fit for fitment in their machines is correct and accepted. However, the fact remains that these castings are made by the appellants as per specifications, drawings and designs given by their customers. Right from the time of making the mould and making of the castings and the intended end use is known and identified. The castings are not fit for any other use. They are, therefore, already identifiable parts of machineries. In view of his findings in an exactly similar appeal that the castings made and cleared by the appellants are classifiable under Item 68 and should be charged to duty (vide order in Appeal No. 427/BR/1980 dated 19-12-80), he held that the Cast Iron Rolls are dutiable under item 68 *ibid* accordingly and rejected the appeal.

3. As mentioned earlier, a single Revision Application was filed against both these appeals. Shri Kohli had argued at length and we have dealt with the first appeal in some detail. The only difference between the two cases is that here there is mention of the cast iron rolls being "tinned and polished" apart from being machined. At the outset Shri Kohli clarified that there was no question of "tinning" and this was probably "thinning". Shri Lakshmi-kumaran did not contest this point as the question of tinning the cast rolls used in making steel products would not arise. Shri Kohli also clarified that the show cause notice as well as the impugned order-in-appeal show that both iron and steel cast and rolls are involved. He further said he would not repeat the arguments already advanced but would rely on the judgment of the Patna High Court, in the jurisdiction of which the appellants have their licensed factory; on the order dated 28-3-80 of the Appellate Collector.

Shri O.K. Sarkar, and on the subsequent order dated 30-4-81 passed by the same Appellate Collector contrary to the present orders and holding that Tariff Item 68 was not applicable to iron/steel cast rolls produced by the appellants.

4. The learned Senior Departmental Representative referred to this Bench's decision that if substantial machining is done to the castings they would attract Tariff Item 68. He agreed that the burden of establishing this was on the department. If given an opportunity he could prove that the value added after casting and machining was negligible compared to the total cost of the rolls which were even known as cast rolls in the market. For use in bar mills, some grooving etc. may be required but this was not required in mills rolling sheets.

To this Counsel for the Appellants objected saying it would amount to re-investigation. As regards the High Court judgment the learned SDR stated that this was under appeal in the Supreme Court, hence it would not be binding on this all-India Tribunal. He relied on J.K. Steels v.I.T.O. decided by the Allahabad High Court [(105) I.T.R. p. 64)]. He found fault with the order under challenge as the Appellate Collector relied on photographs, which was hardly a basis when machining to an accuracy of microns was involved. According to him, here the end shafts were finally finished and the rolls were identifiable machine parts.

Shri Lakshmi Kumaran wanted the appeal to be rejected or in the alternative, for the order to be reserved pending a decision of the matter already before a larger Bench.

5. Shri Kohli, learned Counsel, referred to the show cause notice, the averment that their workshop is not equipped to perform certain necessary machining operations on the rolls and the categorical finding "" on facts to repeat his objection to reinvestigation of the case at this stage. He also argued that there was nothing in law to say that where some finishing work was done, a new article could emerge. It is for the finally finished machine part to beat-duty and this cannot in law be recovered from the manufacturer of cast and unfinished rolls.

6. We have already dealt with a similar appeal and the reasoning there applies here. However, it will suffice if we add that neither the show cause notice nor any

of the two orders specifies the precise description, number, weight and value of the goods in dispute nor the duty due. No evidence has been adduced by the department that the cast rolls are fully machined ready-to-use or almost ready-to-use machine parts though they had ample opportunity as well as power to enquire and establish that they were taxable under Item 68. We cannot turn a blind eye to the specific finding of the appellate order that a lot more of machining work on the cast rolls has to be done by the customers before making them fit for fitment in their machines. We also see force in the objection of the appellants that any reopening of settled facts will amount to setting up a new case. We do not also agree with the learned SDR that the Board's order regarding the stage of accounting of cast products is merely procedural and does not help the appellants' case.

After all, if a casting and a machine part are to bear duty under Items 25/26 A A as well as 68, it is incumbent on the department to fix the stage when the casting ceases to be this and becomes a machine part. As stated earlier even the authorities ordering recovery of duty have not specified the basis. We were informed that in the case of these goods, duty would not be payable by the final customer-user after finishing since they would be used for captive consumption and were exempted being assessable under Item 68. Shri Kohli argued that this would not be sufficient reason for recovering duty under Item 68 from the appellants who manufacture castings falling under Item 25 or 26AA.7. Nothing has, therefore, emerged during this hearing to warrant a finding different from that arrived at in the parallel appeal. For the reasons set out there and as above, we accept the contentions of the appellants and set aside the impugned order. The appeal is consequently allowed.