

Roplas (India) Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-05-1999

Reported in : (2000)(116)ELT705TriDel

Appellant : Roplas (India) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. These two appeals of M/s. Roplas (India) Ltd. relate to dutiability of Fibre Glass Reinforced Plastic (FRP) bodies manufactured by them and fitted on jeeps of M/s. Mahindra and Mahindra Ltd. 2. Impugned Order No. P-337/94 issued on 10-10-1994 was passed in an appeal filed under Section 35E(2) of the Central Excise Act, 1944 and this order sets aside classification list No. 49/91-92 effective from 1-3-1992 approved by the Assistant Collector. The Assistant Collector had approved the classification of the FRP bodies under sub-heading 8707.00 of the Schedule to the Central Excise Tariff and held that the goods were liable to nil rate of duty as jeeps are received from M/s.

Mahindra and Mahindra Ltd. under Rule 57F(2) and that no duty is payable by M/s. Roplas (India) Ltd. as M/s. Mahindra and Mahindra Ltd. are paying duty on the value of the jeep including the value of the FPR bodies. Appeal No. E/1298/96-B1 is in respect of the impugned order No.P/107/96, dated 23-2-1996 upholding duty demand consequent to the decision that M/s. Roplas (India) Ltd. are liable to pay duty on the FRP bodies. The order-in-original had demanded a duty of Rs. 62,69,055.00 in respect of clearances during 1992 and 1993 which had been

raised under four show cause notices. The impugned order has, however, directed reworking of the amount so as to give some relief to the appellants by way of excluding trade discount and duty payable while fixing the assessable value.

3. The facts of the case are that M/s. Mahindra and Mahindra Ltd. manufacture chassis of jeeps and send them to the appellants for manufacture and fixing of bodies on them. After fitment of bodies, the appellants return the jeeps to M/s. Mahindra and Mahindra Ltd. who clear them after payment of duty on the value inclusive of the value of FRP bodies. The appellants paid no duty on the bodies manufactured and fitted on the jeeps. This is a long standing arrangement between the two parties and the Central Excise Authorities had also approved this arrangement. In 1972 M/s. Mahindra and Mahindra had applied to the Collector for permission to remove the semi-finished jeeps (i.e.

without bodies) to Roplas without payment of duty, the return of the jeeps after fitment of bodies (again without payment of duty) by Roplas to M/s. Mahindra and Mahindra and the removal of such jeeps after payment of duty by M/s. Mahindra and Mahindra under Rule 56B of the Central Excise Rules, 1944. The Collector of Central Excise granted permission for the same. Similarly, with the coming into effect of Modvat procedure, permission was sought for carrying out the same movement of goods under Rule 57F(2) of the Central Excise Rules, 1944 and the same was granted. Some show cause notices were also issued in 1990 and 1991 to M/s. Roplas (India) Ltd. demanding duty on the FRP bodies and these proceedings were dropped by the Assistant Collector in August, 1991. We are not reproducing all the details of the proceedings on this issue between the manufacturers and the Central Excise Authorities as it is elaborately reproduced in the impugned Order P-337/94, dated 10-10-94. Suffice it to mention that the procedure followed had been mutually agreed upon between the manufacturers and the Central Excise Authorities and the impugned Order No. P-337/94 is a departure from this agreed procedure.

4. The appellants have submitted that there has been no loss of Central Excise duty as M/s. Mahindra and Mahindra Ltd. were paying duty on the full value of the Jeeps including the cost of the bodies fitted by M/s.

Roplas (India) Ltd. They have also submitted that the manufacturers were eligible to Modvat credit and if duty was paid by M/s. Roplas (India) Ltd. on bodies, the same duty would have been allowable as credit to M/s. Mahindra and Mahindra Ltd. M/s. Roplas (India) Ltd. would also have been eligible for the Central Excise duty paid by them on the raw materials used in the manufacture of the body. They submit that the arrangement of Rule 57F(2) procedure led only to payment of higher amount of duty as M/s. Mahindra and Mahindra Ltd. were paying duty on the body also at the higher rate of 50% as against the duty of 20% leviable on the FRP bodies. They have submitted that the revision of the classification list and demanding duty on the FRP bodies was totally impermissible and unwarranted. They have submitted that permission once granted under Rule 56B or Rule 57F(2) cannot be subsequently questioned and held to be in violation of Central Excise Rules. They have in this connection relied on the decision of the CEGAT in Collector of Central Excise, Cochin v. Shree Bagavathi Tea Estates Ltd., 1997 (92) E.L.T. 240 (T) wherein the Tribunal has held as under :- "We find that the issue before us is quite narrow and does not require us to go into the question whether sorting is necessary for the bulk tea to become dutiable. The issue is whether the goods were cleared by the respondents in contravention of Rule 56B or not.

Collector has observed that once the department had permitted such a movement, no allegation of contravention of that rule could be levelled against the assessee. In holding so he is quite correct.

The department may have made an error in extending the facility, but having extended it, the department's right to question the removal following the permission is lost. The Collector is also correct in observing that since the duty was paid by the consignee unit, the same cannot be demanded from the consignor unit again. We find no infirmity in the Collector's order and therefore reject this appeal from the Revenue." They have also submitted that this decision of the CEGAT derives support from two decisions of the Supreme Court in Kuil Fireworks Industries v. Collector of Central Excise - 1997 (95) E.L.T. 3 (S.C.) and the decision of the Supreme Court in Steel Authority of India Ltd. v. Collector of Central Excise, Bolpur [1997 (90) E.L.T. 267 (S.C.)].

In the first judgment, the Apex Court held that the assessee cannot be made to suffer on account of illegal act of the departmental authorities and that the order of the Collector (Appeals) had become final as the Department had not challenged the order. In the second decision, the Apex Court held that the Department had allowed 'later the better' principle in integrated steel plants in respect of items 25,26 and 26AA and had allowed molten iron to be taken from blast furnace to steel furnace for manufacture of steel ingots and steel ingots having been cleared on payment of full duty, Department was not at liberty to demand duty on pig iron embedded into steel melting scrap which had been cleared without payment of duty under Notification No.150/77-C.E., dated 18-6-1977. The Court held that assessee cannot be placed in a position more disadvantageous than it would have been had it not followed a principle approved by the Department. The appellants have also submitted that had it not been for the Department prescribing Rule 56F(2) procedure, the entire movement of goods should have been under Modvat credit procedure and the appellants would have taken credit of duty on the raw materials used in the manufacture of fibre glass bodies and used the same for payment of duty on the FRP bodies.

The duty thus paid also would have been available as Modvat credit to M/s. Mahindra and Mahindra Ltd. for payment of duty on jeeps.

5. Shri V. Sridharan, learned Counsel, submitted emphatically that the impugned orders are grossly unjust as they upset a mutually agreed procedure. He also submitted that the revision sought to be made also would be futile as Modvat credits at every stage will have to be given to the manufacturers if the revision is carried out.

6. Opposing the submissions of the appellants, learned SDR, Shri D.S.Negi submitted that bodies of vehicles are specifically included in the Central Excise Tariff and, therefore, no objection could be taken to the impugned orders holding the bodies to be liable to duty. He also submitted that M/s. Mahindra and Mahindra were also liable to pay duty on the chassis before body building.

7. We have perused the records of the case and have considered the rival submissions. We find that the procedure adopted by the appellants and M/s.

Mahindra and Mahindra Ltd. with regard to movement of chassis and FRP bodies had been specifically approved by the Central Excise Authorities. The jurisdictional Asstt. Collector had reconsidered this procedure in an adjudication proceeding in 1991 and had reaffirmed the procedure at the end of the adjudication. This order of the Assistant Collector had not been challenged by the Central Excise Authorities and had, therefore, become final. We find great force in the appellants' submission that such a procedure could not be later on held to be retrospectively not valid and duty demanded. We also find that the aforesaid decisions of the CEGAT and the Supreme Court support this contention of the appellants. We also find that the entire movement of chassis and the FRP body was covered by Modvat procedure and reassessment of the goods, apart from being a breach of the procedure approved by the Department during the relevant period, may be Revenue neutral as duty paid at intermediate stages would have been available as Modvat credit. In the circumstances, we find merit in the appellants' submissions and set aside the duty demand. The changes in procedure in a case of this type have to be prospective and may be made so. Accordingly, the appeals are allowed.

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