

Winsome Drill Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-30-1999

Reported in : (1999)LC518Tri(Delhi)

Judge : G B Deva, N T C.N.B.

Appellant : Winsome Drill

Respondent : Collector of Central Excise

Judgement :

1. The appellants manufacture drilling rigs, DTH hammers, button bits and accessories. The impugned order classifies the goods under Chapter Heading 8207 and also denies the appellants small-scale exemption under Notification No. 175/86.
2. The appellants have submitted in the appeal as well as during the hearing that the classification order has been passed without authority and the denial of small-scale exemption is totally erroneous.
3. With regard to classification, the appellants have submitted that the classification of these goods had been approved under a proper classification list by the competent authority for passing classification orders, i.e., the Assistant Commissioner of Central Excise. The matter was also under reconsideration by the jurisdictional Assistant Commissioner under proceedings initiated through issue of a show cause notice. The appellants had also filed their reply to the show

cause notice and during the pendency of these proceedings the Commissioner has taken over the matter from the Assistant Commissioner and passed the impugned order of classification. They have submitted that this is without authority, apart from the order being incorrect.

The taking away of the classification power from the Assistant Commissioner also affects the levels of appeal available to the manufacturer.

4. With regard to the denial of small-scale exemption, they have submitted that the order has been passed on the basis that the goods were sold under the trade name of another person, namely, M/s. Water Development Society (WDS). The appellants have submitted that this finding is without any evidence. They have submitted that even though in the sales documents the machinery were given the name of "Panthor" and "Bison", no such names were affixed on the products themselves and in the absence of such affixing of the brand name on the products the goods were eligible for the exemption.

5. They have also submitted that the Collector's observation that they were using the following monogram on the product is also of no consequence as it is not the brand name of another person: Their submission is that the Collector has, without verifying the facts, gone by the fact that the agreement with the Water Development Society provided for the use of the trade mark of the Water Development Society by the appellants. However, as a matter of fact, they were not using the trade mark on the products.

6. They have submitted that the goods will become ineligible only if it attracted undermentioned provision of Notification No. 175/86, which stipulates that the exemption shall not apply only if a manufacturer "affixes the specified goods with the brand name or trade name of another person." "The exemption contained in this Notification shall not apply to the specified goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this Notification." 7. Heard Shri A.K. Agrawal, SDR, for the Revenue. He reiterated the findings in the adjudication order that it is an admitted fact that the no-ticee had affixed the monogram of Water Development Society on the goods manufactured

by them. The President of the company had also admitted that they were using the brand name and the monogram of Water Development Society as per the agreement and that they are imposing the monogram by punching on each and every part of the product manufactured by them.

8. We have perused the records of the case and have considered the rival submissions. We find that the classification question and the short-levy demand are clearly separate issues. The classification question was already under examination by the jurisdictional Assistant Commissioner when the Collector initiated the proceedings for recovery of duty short-levied on account of availing of small-scale exemption.

The classification of goods is rightly under the purview of the Assistant Commissioner. The appellants' right for appellate remedy is also affected if a higher authority took away this jurisdiction.

Therefore, it would be appropriate in the present case that the two issues are separately decided by the competent authorities. We are, therefore, of the opinion that the classification matter should be considered by the jurisdictional Assistant Commissioner. With regard to the eligibility for small-scale exemption, we find that the use of the names "Panthor" and "Bison" on the machines and the inscription of the monogram are the grounds for denial of the exemption. With regard to the use of the names, the appellants had been consistently maintaining before all authorities that these names are used by the various manufacturers producing the same goods under the technology obtained from Water Development Society and that these names were not affixed on the goods themselves but were only entered on the invoices. We find that the adjudication order does not give a finding on this contention of the appellants. The order only says that "the noticee's contention that they do not affix the brand name "Panthor" and "Bison" in their product, is not tenable." The reason for reaching this finding is that the appellants were manufacturing the goods under agreement with M/s.

Water Development Society and the agreement provided for the use of the brand name. This line of reasoning does not satisfy the requirement of Notification No. 175/86. The stipulation in the notification specifically states that the goods would

be ineligible for exemption only if the manufacturer "affixes the specified goods with a brand name" (emphasis added). Therefore, it is necessary for coming within the mischief of the exclusion clause in the notification, that the goods themselves are affixed with the brand name and not the sales documents. Therefore, it is necessary that the appellants' submission that they are not affixing the brand name "Panthor" or "Bison" be verified with regard to the goods and specific finding recorded. With regard to the use of the monogram also we find that the monogram is apparently a combination of the names of both the appellant and the Water Development Society, "WDS" in the monogram presumably representing Water Development Society and "Winsome" representing the appellants. Such a combination-monogram, it appears prima facie, is unlikely to be the monogram of Water Development Society. Therefore, it is necessary to investigate whether this is a trade name/trade mark and if it is, whether it is of Water Development Society. We, therefore, feel that the case is required to be remanded to the Commissioner for verification and specific finding on the use of trade mark of another person on the goods. The appeal is accordingly allowed by way of remand, for a decision on classification by the jurisdictional Assistant Commissioner and a decision on the eligibility to the small-scale exemption by the jurisdictional Commissioner. Needless to say, the authorities shall give the appellant full opportunity to present their case before both the authorities in the remand proceedings.

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