

Workwell Engineering Co. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-21-1999

Reported in : (1999)LC486Tri(Delhi)

Appellant : Workwell Engineering Co.

Respondent : Commissioner of C. Ex.

Judgement :

1.1 The appellants herein are manufacturers of ghar ghanti cabinet without electric motor (domestic flour mills without electric motor).

From 1-3-1986 the above product was classified under Heading 85.09. The Officers of Ahmedabad Collectorate without going into the facts of the determination of the classification of the articles calculated value of clearances which they found to have exceeded Rs. 15 lakhs and duty was calculated at 5% ad valorem amounting to Rs. 12,053.42. When the above came to the knowledge of the Assistant Collector of Central Excise concerned, he passed the order modifying the classification of the product under Heading 84.79 instead of Heading 85.09. The said order is dated 23-2-1987. Before passing the said order issued a show cause notice proposing modification of classification which was issued on 18-9-1986. The Assistant Collector changed the classification of the product to Heading 84.79. In the meantime, the Preventive Officers had recovered duty of Rs. 12,053.42, as aforesaid under TR-6Challan No.1/87 on 12-3-1987. This duty was paid by the appellants herein under protest. Thereafter, the appellants submitted a classification list claiming the classification of the articles under

Heading 84.37 w.e.f.

1-3-1987 which was approved by the Assistant Collector without making any modification.

1.2 In view of the aforesaid classification list approved by the Assistant Collector w.e.f. 1-3-1987 the appellants filed a refund claim for Rs. 12,053.42 on the ground that they were made to pay the duty under protest and hence they filed the refund claim in view of the subsequent approval of classification list. The lower authority has rejected the refund claim on the ground that the appellants herein paid the duty in view of having exceeded clearance of value of Rs. 15 lakhs and in view of the fact that they were availing the benefit of Notification 175/86. The duty was paid by them not on the basis of wrong classification but was paid by them that they had exceeded the clearance value under the exemption Notification 175/86. It is against the said order that the appellants have come in appeal and have desired the Tribunal to decide the case on merits. Accordingly, we have heard the learned JDR, Shri M.P. Singh for the Revenue.

2. Learned JDR has made a submission that for lodging a protest a formal letter of protest must be filed by the appellants. That has not been done in the present case. Only the expression 'under protest' has been written by the appellants on the relevant TR-6 challan dated 12-3-1987. He, therefore, submits that the payment cannot be considered to be under protest in terms of Rule 233-B of the Central Excise Rules, 1944. He further points out that as rightly held by the lower appellate authority the duty was paid on account of exceeding the exemption value in terms of Notification 175/86 and not on the basis of wrong classification of the product. He, therefore, submits relying on the Tribunal's judgment in the case of Jain Ceramics Industry reported in 1995 (78) E.L.T. 186 that even payment of duty under protest on the above ground is of no help to the appellants for subsequent approval of classification list on the basis of which the present refund claim is based. Learned JDR, prays for dismissing the appeal.

3. We have carefully considered the pleas advanced by the learned JDR. We have also gone through the grounds of the appellants' memo of appeal before us. We agree with the submission of the learned JDR in view of the Tribunal's judgment in

the case of Jain Ceramics Industry, supra that the protest lodged by the appellants on the basis of applicability of Notification 175/86 cannot be made applicable to the ground on which the refund claim has been based i.e. on the ground of classification of the product under Tariff Heading 84.37, as claimed by the appellants and as against classification under Tariff Heading 84.79 as made by the Department during the relevant period. Consequently, we do not find any substance in the appeal. Hence, we reject the same.

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