**Prayas Casting Ltd. Vs. Commissioner of C. Ex. and Customs**

**Prayas Casting Ltd. Vs. Commissioner of C. Ex. and Customs**

**SooperKanoon Citation** : sooperkanoon.com/15801

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** May-12-1999

**Reported in** : (1999)LC64Tri(Mum.)bai

**Appellant** : Prayas Casting Ltd.

**Respondent** : Commissioner of C. Ex. and Customs

**Judgement** :
1. This appeal was argued by Shri K.A. Sindhi, Consultant and the revenue was represented by Shri K.M. Patwari.

2. The assessees manufactured various articles of copper including cast articles of copper. Heading 74.19 reproduced below covered such cast articles: 7419.10 - Chin and parts thereof 15% 7419.91 - Cast, moulded, stamped or forged, 15% but not further worked Notification No. 98/88-C.E., dated 1-3-1988 vide SI. No. 1 prescribed Nil rate of duty for "cast articles of copper". This notification was superseded by Notification No. 178/88-C.E., dated 13-5-1988 whereby cast articles of copper, continued to attract Nil rate of duty.

However, unlike in the case of earlier notification, this notification limited the exemption to cast articles which fell under sub-heading 7419.91.

3. During 1-3-1988 to 9-7-1989 the present appellants filed several clas sification lists showing the classification of such products, under sub-heading 7419.91 and claiming the benefit of the cited notifications. The departmental officers found that

the assessee was undertaking proof machining on some of the castings. It was observed that after such proof machining the castings would fall under sub-heading 7419.99 and therefore, would not fall in the purview of the exemption notifications. In the belief that duty was evaded by the assessees, by suppression of the fact that proof machining have been made on the cast articles, on 10-2-1993 the Show Cause Notice was issued seeking recovery of duty not levied and also imposition of penalty. The Collector in his impugned order confirmed demand amounting to Rs. 31,74,617.16 and also imposed a penalty of Rs. 5 lakhs on the assessees. This appeal is against this order.

4. We have examined the tariff and the coverage of the two notifications.

5. Notification No. 98/88 exempted cast articles of copper without specifying the tariff headings. We find that those castings which were worked upon fell under sub-heading 7419.91 and those which were worked upon like being subjected to proof machining would attract sub-heading 7419.99. Either of these two sub-headings would be covered under the general description given in the notification. During pendency of the notification therefore, there was no loss of revenue. With the supersession of this notification, the exemption by virtue of Notification No. 178/88 became restrictive in nature, inasmuch as it specified only 7419.91 and did not cover sub-heading 7419.99. Once the casting was subjected to proof machining they would fall under sub-heading 7419.99 and would not be covered under the Notification.

6. Shri Sindhi attempted to establish his case by referring to note No.(1) (g) (h) of the Chapter note. These two chapter notes cover products other than castings and the coverage of the instructions relating to these articles may not apply to other articles such as castings. On merits we find that the benefit of the latter notification had wrongly been taken by the assessees in the case of machined castings.

7. However, on limitation we find that the assessees have a strong case. Before the Collector, the aspect of limitation was put forth. The Collector continued to insist that the declaration given by the assessee was wrong.

8. From the material placed on record, we find that as regards machined castings or copper there was a long history of dispute between the assessees and the department. Under the old tariff prior to 1986, the department had claimed that such goods would merit classification under T.H. No. 68 and not under 26A. The Collector when passing the order dated 27-1-1987 had gone through the process and had also examined the samples, before ruling that proof machining did not give rise to a new article. The same issue was referred to in Collector (Appeals) order dated 28-8-1991 dealing with Modvat eligibility. When the department had knowledge of the exact processes undertaken on the cast copper pieces, the department could not plead that the assessee had suppressed the fact of machining when filing the classification lists. In view of this history of knowledge by the department, the charge of suppression cannot survive and demand becomes barred by limitation and for the same reasons the orders of penalty also do not survive. In the result appeal succeeds and it is allowed. Directions are made for consequential relief.