

Aps Star Industries Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-20-1999

Reported in : (1999)(65)ECC518

Appellant : Aps Star Industries Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants manufactured water pump bearings and classified them under sub-heading 8485.90. Show Cause Notice dated 2-4-1993 cited the balance sheet of the company for the year ending 1990-91 which described certain goods as "Antifriction assemblies for Water Pumps for Automobiles/Tractors". It was alleged that these were actually parts of water pumps for automobiles and in terms of Note 1(k) of Section XVI of the C.E.T.A, 1985, should merit classification under sub-heading 8708.00. The show cause notice alleged that the assessee had wilfully mis-declared the aforesaid product and had also suppressed its true and correct nature and description at the time of filing classification lists. On this ground duty was demanded for the period March, 1988 to December, 1991. The Collector in his impugned order dated 30-6-1995 upheld the charges and confirmed the duty amounting to Rs. 3,60,240/- but did not impose any penalty. The present appeal arises out of this order.

2. We have heard Shri B.M. Shah Consultant for the appellants and Shri K.M. Patwari for the Revenue.

3. Shri B.M. Shah has brought out the history of classification of the disputed products and has placed on record copies of the proceedings.

4. We have seen the various balance sheets of the assessee company for the years 1984-85 which were picked at random from the balance sheet brought by Shri Shah from the period 1977 onward. We find that the statement that the assessees are making Anti friction assemblies of automobiles/tractors was appearing in all the balance sheets published during the period. We have seen the show cause notice dated. 21-7-1992 issued by the Assistant Collector. In this show cause notice, the allegation was made that the classification under Heading 8489.90 was not correct but that the goods merited classification under Heading 8708.00. In making this charge the show cause notice cited the section note quoted above and made the charge that these goods were specifically designed for use in motor vehicles. Follow up show cause notices demanding differential duty were also issued. The Assistant Collector adjudicated these three show cause notices vide his order dated 10-8-1993/3-9-1993. He arrived at the conclusion that the correct classification was under Heading 8409.00, revised classification accordingly and dropped the demand. We have also seen a copy of an earlier order in appeal dated 9-4-1987 on the issue whether the products manufactured by the appellants were classifiable under Tariff Item No. 49 as rolling bearing or under Tariff Item No. 68.

5. What the two citations indicate is that over the last several years classification of the contested goods was being debated and decided.

The show cause notice dated 21-7-1992 made the very same allegations as in the show cause notices leading to the present dispute. In fact the allegations as to suppression of facts etc. was also made in the show cause notice, dated 21-7-1992. With this background covering a long stretch of time during which the contested product had come under microscopic scrutiny, we find that the allegation of suppression made in the show cause notice leading to the impugned order does not sustain. We find that in the impugned order the Id. Collector has recorded the assessee's submission that the extended period did not sustain but has not pronounced his opinion on that count in his finding.

6. On perusal of the history of the contest we hold that the department at all times was aware of the identity of the product and had considered several alternate classification including that which was held by the Collector in the present order. In such a situation the allegation as to misrepresentation with intent to evade duty does not survive. In the present show cause notice the allegations made are repeat allegations from the previous show cause notices with reference to the balance sheets it has been shown to us that at all times the very description was available in the preceding balance sheets also. On this ground we hold that the demand confirmed in the impugned order does not sustain and allow this appeal.

7. Since we have allowed the appeal on limitation alone, the merit of the classification are not discussed.

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