

Commissioner of Central Excise Vs. Klassik Enamellers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-21-1999

Reported in : (1999)(112)ELT90TriDel

Appellant : Commissioner of Central Excise

Respondent : Klassik Enamellers

Judgement :

1. Question before us in this appeal of Revenue is whether the goods described as metal reflectors used for fluorescent light fittings and enamelled are entitled to the benefit of Notification 76/86, dated 18-2-1986 against S. No. 10 to the Table thereof. The said serial number grants exemption to "enamelware" "simplicitor" without any qualification or the heading under which it falls. The adjudicating authority whose order is impugned before us has held that in the absence of qualification to the article "enamelware", any article which is sold across the counter and enamelled would be covered by the said notification and hence the benefit was extended.

2. The CBEC in exercise of its powers under Section 35E of the Act has raised the following points :- "(1) Whether or not in the facts and circumstances of the case, the goods namely 'enamelled reflectors' are classifiable under 9405.00 and assessable at the rate of 15% adv. of Central Excise duty.

(2) Whether or not in the facts and circumstances of case, the Collector was justified in holding that the goods were eligible for the exemption under Notification

No. 76/86, dated 10-2-1986 and thereby setting aside the show cause notice issued.

(3) Whether by an order passed under Section 35C of the Act, the Tribunal should set aside the order passed by the Collector and confirm the demand amounting to Rs. 69,379.87 raised in the Show Cause Notice, dated 24-10-1991 and also impose penalty on the assessee, or pass such other order as may be deemed fit."

3. We have heard the learned JDR, Shri V.M. Udhoji and Shri A.C. Jain, learned Advocate for the respondents. Learned JDR has submitted that the goods in question are not known as enamelware in the trade. They are parts of light fittings and they cannot be considered as articles sold across the counter but are machinery items and sold to well-known industrial users like Bajaj Limited etc. Learned JDR, therefore, submits that the impugned order be set aside and the appeal of the Revenue be allowed.

3.1 On the other hand, learned Advocate has reiterated the findings of the adjudicating authority. He highlights the fact that the expression 'enamelware' in the said notification is not qualified by any other word, nor does it indicate under which heading or sub-heading enamelware should fall. It is, therefore, an omnibus type of exemption notification and it applies to all articles which are enamelled.

3.2 He has also raised a point that the demand of duty would also be barred by time. He fairly admits that this point was not considered by the adjudicating authority inasmuch as that authority has given the benefit to the respondents on merits alone and he dropped all the charges.

5. We have carefully considered the pleas advanced from both sides. We agree with the findings of the original authority that the scope of the expression 'enamelware' in Notification 76/86 is very wide and any article which is sold across the counter and enamelled is to be called enamelware particularly when there was no heading or sub-heading given against the said expression 'enamelware' in the notification. Revenue by its appeal is unnecessarily trying to narrow the scope of the notification, which is not justified. Accordingly, we dismiss the appeal of the Revenue.