

Poultek Engineers Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-16-1999

Reported in : (2000)(117)ELT348TriDel

Appellant : Poultek Engineers

Respondent : Collector of Central Excise

Judgement :

1. In this appeal filed by M/s. Poultek Engineers, the matter relates to the classification of the goods poultry keeping cages and the eligibility to the benefit of Notification No. 111/88-C.E. In the show cause notice dated 19-2-1992 the Collector of Central Excise, Coimbatore had demanded Central Excise duty of Rs. 9,52,633.50 for the period 1988-91. The adjudicating authority taking note of the fact that the classification issue was settled by the trade notice issued in October, 1990 restricted the demand for the period on and after 8-10-1990. The demand of Rs. 64,330.20 was confirmed. A penalty of Rs. 10,000/- was imposed.

2. When the matter was called, none appeared for the appellants. The notice for today's hearing has been issued on 21-4-1999 and the notice had been duly received by the appellants on 26-4-1999 as per acknowledgement on record. As this is an old matter in which the show cause notice was issued in the year 1992, we are proceeding to deal with the matter on merits after hearing Shri M.P. Singh, learned Departmental Representative. We find that the goods involved were poultry keeping cages made of iron and steel. They had no movement or mechanical parts therein. The appellants had pleaded that they were poultry

keeping machinery. This has been discussed by the adjudicating authority who had come to a finding that the goods in dispute were not machinery but were equipment which were not eligible for the benefit of exemption Notification No. 111/88-C.E.3. Regarding classification, reference has been made to the trade notice issued in October, 1990 under which it was classified that the poultry cages made of iron and steel were classifiable under Sub-heading No. 7326.90 of the Central Excise Tariff. As prior to the issue of this clarification by way of trade notice, there was genuine doubt regarding the classification of the poultry cages, the adjudicating authority had extended the benefit of doubt with regard to the demand prior to 8-10-1990 and against the demand of Rs. 9,52,633.50 as made in the show cause notice dated 19-2-1992, he had confirmed only a demand of Rs. 64,330.20.

4. Other issues raised by the appellants had also been discussed by the adjudicating authority in paras 13 to 16 of the order.

5. After going through the facts on record, we do not find any infirmity in the view taken by the learned Collector of Central Excise, Coimbatore. However, keeping in view the nature of the dispute and the facts and circumstances of the case, we reduce the amount of penalty from Rs. 10,000/- to Rs. 5,000/- (Rupees Five Thousand only). Subject to this reduction in the amount of penalty from Rs. 10,000/- to Rs. 5,000/-, the appeal is otherwise rejected. Ordered accordingly.

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