

India Polymers Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-07-1984

Reported in : (1985)(20)ELT166TriDel

Appellant : India Polymers

Respondent : Collector of Central Excise

Judgement :

1.This is a revision application (hereinafter called "appeal") filed before the Central Government which under Section 35P of the Central Excises and Salt Act, 1944, stands transferred to this Tribunal to be disposed of as if it were an appeal presented before the Tribunal.

2. The case relates to the classification of tyre flaps manufactured by the appellants and the consequential demand of duty on removals for the period from 20-6-80 to 19-12-80.

3. The facts in brief are that the appellants are manufacturers of tyre flaps. These are in the nature of a reinforcement for a tyre when used with a vehicle which has to carry heavy loads. The appellants manufacture only tyre flaps and not the outer covers of the tyres or the inner tubes.

4. Item 16 of the Central Excise Tariff Schedule as in force from 1-3-75, has the following main description :- " "Tyres" means a pneumatic tyre in the manufacture of which rubber is used and includes the inner tube, the tyre flap and the outer

cover of such a tyre." This is followed by separate sub-items fixing different rates of duty for different articles falling within this heading. Prior to 1-3-75, this Item did not include a reference to "the tyre flap". This was added to the description through the Finance Act of that year.

5. The appellants started the manufacture of tyre flaps from May, 1978.

They applied for a manufacturing licence in Form L-4 and deposited the appropriate fee of Rs. 20. They were, however, informed by the Central Excise authorities that the tyre flaps fell under Item 68 of the Central Excise Tariff and as their clearances fell within the exempted ceiling, there was no need for them to take out a licence. On 6-7-78, they filed the prescribed declaration to the effect that their clearances in a year would be less than Rs. 30 lakhs. Similar declarations were filed by them in the year 1979-80 and the year 1980-81. All these declarations were accepted by the Central Excise authorities and no questions were raised, nor were they required to take out a licence or pay duty.

6. On 19-12-80, the Assistant Collector of Central Excise visited the appellants' factory. He was of the view that the tyre flaps were dutiable. The Superintendent of Central Excise made further enquiries, as a result of which a show cause notice dated 19-12-80 was issued by the Superintendent on the spot, requiring them to show cause why duty should not be levied on tyre flaps cleared during the period 20-6-80 to 19-12-80. There was enclosed with the show cause notice a statement purporting to show the clearances of tyre flaps without payment of duty during the aforesaid period. (It later transpired that this statement was incomplete, in that a substantial quantity of tyre flaps removed during that period were not included. This aspect is not material for the purposes of this order).

7. The appellants sent their reply to the show cause notice, addressed to the Assistant Collector. That officer fixed the personal hearing for 2-4-81. The appellants did not appear before him on that date, but instead, according to them, sent a letter dated 2-4-81 seeking extension of time by a month apparently on the ground that they were gathering some information regarding the duty liability of tyre flaps.

Apparently, this letter was not received by the Assistant Collector (the appellants have admitted that they have no receipt for the letter). In any event, it was not before the Assistant Collector when on 21-4-81 he passed his Order in-Original, noting that no representative of the company appeared on the date of personal hearing.

After discussing in detail the grounds advanced in the reply to the show cause notice, the Assistant Collector held that tyre flaps were dutiable under sub-item I of Item 16. He also ordered that the appellants should pay excise duty on the tyre flaps manufactured and cleared by them from 20-6-80 to 19-12-80, that is for the six months prior to the date of the show cause notice.

8. Thereafter the appellants went up in appeal to the Appellate Collector. In addition to submissions on merits, they also argued that the excise authorities were not entitled to change the view which had been earlier taken by them. They also, during the personal hearing before the Appellate Collector, raised the ground that there had been a denial of natural justice in the proceedings before the Assistant Collector.

9. The Appellate Collector upheld the Assistant Collector's order and rejected the appeal.

10. Appearing before us for the appellants, Shri K.R. Mehta advanced arguments on procedure as well as on merits. As regards merits, he submitted that tyre flaps were not covered by Item 16. He pointed out that according to the definition given in this Item, "tyres" means a pneumatic tyre, that is one which could contain air under pressure. The tyre flap was open on one side, like the tyre cover itself and, therefore, according to Shri Mehta, could not be said to be "pneumatic".

11. It was pointed out to Shri Mehta that the description in the Tariff Item as in force after its amendment in 1975 specifically states that "tyres" includes the tyre flap. Shri Mehta, however, submitted that a tyre flap would be dutiable under this Item only if it was manufactured along with the inner tube and the outer cover. If only a tyre flap was manufactured and cleared, it would not be covered by the Item.

12. In this connection Shri Mehta also referred to a Trade Notice of 1974, containing a tariff advice of the Central Board of Excise and Customs, according to which tyre flaps were not included within Item 16. Shri Mehta, however, admitted that this was before the amendment of that Tariff Item so as to specifically include tyre flaps.

13. Shri Mehta also submitted that the show cause notice dated 19-12-80 issued by the Superintendent in effect contained a finding on the classification because it contained a statement that "the tyre flaps manufactured by Messrs India Polymers would fall under T.I. No. 16". He relied upon the judgment of the Calcutta High Court in the case of Raghuncmdan Man v. Collector of Central Excise, West Bengal and Ors.

(1981 E.L.T. 476), in which it was held that if the enquiry officer had already made up his mind in regard to the quasi-judicial proceedings, it could not be said that the proceedings were in accordance with law or in compliance with the principles of natural justice. Shri Mehta further submitted that the show cause notice did not specify the amount of duty and was, therefore, not valid. For this he relied on the judgment of the Bombay High Court in the case of J.B.A. Printing Inks Ltd. v. Union of India and Ors. (1980 E.L.T. 121).

12. Shri Mehta had also referred to a violation of the principles of natural justice by the Appellate Collector. However, when the Bench asked him to be more precise on this, Shri Mehta explained that the appellants had sought more time after the hearing for filing copies of certain Trade Notices and judgments which they had cited during the hearing before the Appellate Collector but of which they did not have copies to file at the time of the hearing.

13. Replying on behalf of the Department, Shri Tayal submitted that the description of Item 16 was very clear after the amendment in 1975 which included tyre flaps within the description. As the amended entry stood (and this was the entry in force at the material time) there could be no shadow of doubt that tyre flaps were covered by the Item. The Board's tariff advice referred to by the appellants pertained to 1974, when the Item did not include tyre flaps and, therefore, had no relevance to the classification of tyre flaps after the amendment.

On the argument of Shri Mehta that tyre flaps could not be considered as "pneumatic" because they were not closed, and that a tyre flap would be dutiable only if it was part of a complete set consisting of an inner tube, a tyre flap and an outer cover, Shri Tayal submitted that the Tariff Item contained an extended definition which specifically included a tyre flap and, therefore, it was not relevant to consider whether a tyre flap by itself could contain air or not. He also submitted that Shri Mehta's argument would lead to the conclusion that a tyre flap manufactured by a person who also manufactured the inner tube and the outer cover would be dutiable, whereas one manufactured by a person who did not manufacture the inner tube and the outer cover would not be dutiable. Considering that excise duty was basically on goods, this would be an unreasonable interpretation which would lead to anomalous situations and discrimination between different manufacturers. The correct interpretation, therefore, would be that a tyre flap was dutiable under Item 16 irrespective of the other articles which were or were not manufactured by the manufacturer.

14. Shri Mehta had argued that over a period of years, the Excise Department had been aware that the appellants were manufacturing tyre flaps and the Department had specifically told them that the tyre flaps were classifiable under Item 68 and not under Item 16. Shri Mehta had, therefore, argued that the Department was not entitled to change the classification in the absence of a cogent reason for doing so. Nor could they rely on the amendment made in 1975, since that was not a new factor. As regards this argument, Shri Tayal submitted that the change in classification was for the very cogent reason that after the Tariff was amended tyre flaps were clearly liable to duty. The fact that this cogent reason had been overlooked for some time would not make it less cogent. In any event, the provisions of the statute were clear, and there could be no estoppel against the statute.

15. In this connection, Shri Tayal cited the judgment of the Delhi High Court in the case of *Bawa Potteries v. Union of India and Anr.* (1981 E.L.T. 114), in which it had been held that Rule 10 of the Central Excise Rules permitted a review of an assessment or refund order if the appropriate authority came to a conclusion that the earlier decision was erroneous. (Shri Tayal submitted that although the show

cause notice did not specifically refer to Rule 10, it was clear from the wording of the notice, particularly the period of six months mentioned therein, that it was issued under that Rule). He, therefore, submitted that the action of the Assistant Collector was in accordance with law.

16. Dealing with the argument of Shri Mehta that the show cause notice was vitiated because the amount of duty proposed to be demanded was not specified, Shri Tayal relied on the judgment of the Delhi High Court in the case of Hindustan Aluminium Corporation v. Superintendent of Central Excise, Mirzapur and Ors. (1981 E.L.T. 642), in which it had been held inter alia that a show cause notice would not void only because the amount of duty had not been specified. Shri Tayal further pointed out that in this judgment, which was that of a Division Bench of the Delhi High Court, the Hon'ble Court had specifically noticed and differed from the decision of the Single Judge of the Bombay High Court in the J.B.A. Printing Inks Ltd., case relied upon by Shri Mehta.

17. We have carefully considered the arguments advanced on both sides.

On merits, Shri Mehta has contended that the tyre flaps manufactured by the appellants were not excisable under Item 16, despite the specific mention of "tyre flap" in that Item. According to him, a tyre flap would be excisable only if it was cleared along with an inner tube and an outer cover. We do not find any force in this contention. The main description of Tariff Item 16 gives an extended meaning to the term "tyres" and specifies that it includes inter alia a tyre flap. When it is laid down that a particular term includes X, Y and Z, it cannot reasonably be contended that Y is included in that term only if it is accompanied by X and Z. This would not be a normal or reasonable interpretation.

18. In support of his argument, Shri Mehta contended that a tyre flap could not be regarded as "a pneumatic tyre" because it could not itself contain air under pressure. Whatever force this submission might otherwise have is taken away by the fact that the term "tyres" is defined in the statute itself so as to specifically include a tyre flap. As has been laid down by the Supreme Court in its judgment in the case of Dunlop India Ltd. v. Union of India (ECR C476 SC), "once an article is classified and put under a distinct entry, the basis of the classification is not open

to question". The weakness of the argument advanced would be apparent if we look at Item 39 of the Central Excise Tariff which deals with "lighters, not elsewhere specified". In the description of this Item the term "lighter" has been defined, and the description further states that it "includes a lighter issued from a factory in an incomplete state or requiring for its completion the addition of a flint". Clearly, it would not be open to a manufacturer to argue, in the face of this statutory definition, that a lighter which is incomplete or which lacks a flint cannot be classified under this Item because it cannot cause ignition. Similarly, in the present case it cannot be argued that Item 16 does not cover a tyre flap because it cannot contain air under pressure. Nor can it be contended that the Item would not cover a tyre flap if this is the only article manufactured. Such an interpretation would not only be contrary to the plain wording of the Tariff Item but would also introduce an unwarranted discrimination between different manufacturers of tyre flaps. We, therefore, hold that at the material time tyre flaps were classifiable under Item 16 whether the manufacturer cleared them separately or along with inner tubes and outer covers.

19. This brings us to Shri Mehta's arguments regarding the validity of the show cause notice. The point that the show cause notice did not specify the amount of duty and was, therefore, not valid is covered by the judgment of the Delhi High Court in the case of Hindustan Aluminium Corporation. Even otherwise, we observe that in the present case the show cause notice was very specific in the sense that it enclosed a detailed list of the consignments alleged to have been removed without payment of duty. This argument of Shri Mehta, therefore, has no substance.

20. The argument that the show cause notice showed that the adjudicating authority had already made up his mind is also not valid.

It appears to us that the sentence referred to by Shri Mehta only contained the essence of the charge against the appellants. Quite apart from this, the show cause notice was issued by the Superintendent and made returnable to the Assistant Collector who was the adjudicating officer. The use of the above sentence by the Superintendent cannot be interpreted to mean that the Assistant

Collector had made up his mind.

21. As regards the alleged violation of the principles of natural justice, it is established that the appellants did not appear before the Assistant Collector at the appointed time. It is clear that their request for adjournment was not before the Assistant Collector when he passed his order, and they have admitted that they have no evidence of the receipt of this letter by the office of the Assistant Collector.

The Assistant Collector has given a reasoned decision on the basis of the appellants' reply to the show cause notice. In the circumstances we do not find substance in the plea that there was a violation of the principles of natural justice in the proceedings before the Assistant Collector. As regards the proceedings before the Appellate Collector, the question of violation of natural justice was only faintly urged, and it transpired that it was based on the ground that they were not given time to file copies of trade notices and judgments which the appellants had cited during the hearing. We do not think that such a factor could vitiate the order of the Appellate Collector. It was for the appellants to have ready with them copies of the trade notices and judgments, etc., of which they wished to submit copies and to submit them at the time of the hearing.

22. As regards Shri Mehta's argument that the Department had over a period of time accepted the classification under Item 68 and was not entitled to change it without cogent reason, we find that the amendment of the Tariff Item which specifically brought in tyre flaps was certainly a cogent reason for changing the practice. It is true that the Department should have woken up to this position earlier, but the fact that they did not do so does not mean that the appellants could continue indefinitely to enjoy a benefit which was patently contrary to the wording of the Tariff Item. As Shri Tayal pointed out, there can be no estoppel against a statute. We also find that the lower authorities had been fair in not seeking to go back more than six months beyond the date of the show cause notice. This objection, therefore, has no force.

23. In the result, we find that the orders of the lower authorities were correct. We accordingly confirm the Appellate Collector's order and reject the appeal.

