

Hercules Hoists Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-14-1999

Reported in : (1999)(114)ELT833Tri(Mum.)bai

Appellant : Hercules Hoists Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The assessee manufactured goods described as "Triple Spur Gear Chain Pully Blocks". The classification claimed was under Sub-heading 8425 of the CETA, 1985. It appears from 1986 to 1991 this classification was approved by the Department. When similar classification lists were filed on 1-4-1991 and 26-7-1991, the Assistant Commissioner issued show cause notice alleging that the correct classification was under sub-heading 8483 in place of that suggested by the assessee. Differential duty was sought to be demanded.

In neither of the two notices dated 21-10-1991 and 26-10-1991, was any ground given for seeking re-classification. The assessee advanced arguments on merits. The Assistant Collector held that, pulleys and pulley blocks, separately presented without chains, would merit classification under Heading 84.83 and not 84.25. He confirmed the classification in terms of the show cause notices and also confirmed the demand amounting to Rs. 43,010.55. The assessee then filed an appeal. The Commissioner relied upon the explanatory notes to the HSN. He held that systems of pulley blocks without chains could not perform the function of hoisting loads, and therefore upheld the order of the Assistant Collector. Against

this order the present appeal is filed.

2. We have heard Shri J.F. Pochkhanawala for the assesseees and Shri K.M. Patwari for the revenue.

3. As we have observed above the show cause notices failed to give the logic as to the grounds on which the re-classification is sought to be made. The right of the excise authorities of taking a view different than earlier taken in the approved classification list has been held to be valid by the Supreme Court in their Judgment in the case of Elson Machines Pvt. Ltd. v. Collector of Central Excise [1988 (38) E.L.T. 571 (S.C.)]. But the Supreme Court in their Judgment in the case of Union of India v. Garware Nylons Ltd. [1996 (87) E.L.T.12 (S.C.)], has spelt out as to in what manner the change is to be made. It has been held that the burden of proof is on the taxing authorities to show that the particular goods are taxable in the manner claimed by them. It was observed that mere assertion in that regard is of no avail. The court observed that at all times the taxing authority should lead evidence to support their proposal as also their subsequent action. The Tribunal in their judgment in the case of Aravali Forgings Ltd. v. Collector of Central Excise, Jaipur [1994 (70) E.L.T. 693 (Tribunal)] held that this burden on Revenue was not discharged by merely showing inapplicability of one of the competing entries.

4. Tested on the cited judgments we find that the very proposition of the revenue for re-classification was without the sanction of the law laid down by the Supreme Court and on this ground the appeal merits to be allowed.

5. We have however seen the competing entries and the explanatory notes given under the various sub-entries. We have also seen the product literature of the contested goods. The goods manufactured are complex system containing gear shafts, chain wheels, threaded bush, brake disc and ball bearings. They are admittedly cleared without chain which are necessary for the machine's function. It would however be incorrect to say that in the absence of the chain, the pulley blocks do not merit classification under the entry 84.25. The pulleys and pulley blocks covered under Heading 84.83, in terms of the explanatory notes cover simple pulleys. They also covered pulleys which act only as guide and do not transmit any power. The fact that contested goods have gears is suggestive of its

being a mechanism for transmission of power.

Therefore the entry described under 84.83 obviously does not cover the contested goods.

6. The finding of the Assistant Collector and the Collector (Appeals) that in the absence of chains, the classification is required to be changed is a simplistic assumption. Shri J.F. Pochakhanawala suggests that this may be based on the wording of the Circular No. 18/89 CX. 4, dated 21-4-1989. Since this circular is not mentioned in the order, or in the show cause notice, we would not like to go into the vires of that circular. We, however, record that in our opinion the appropriate classification was under 84.25 and not under 84.83.

7. The appeal accordingly succeeds and is allowed with consequential relief.

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