

Krishna Steel Ind. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-22-1999

Reported in : (2000)(116)ELT115TriDel

Appellant : Krishna Steel Ind.

Respondent : Commissioner of Central Excise

Judgement :

1. Our Final Order Nos. E/1154-1157/98-D, dated 28-7-1998 is the subject matter of this ROM. The issue involved is the correct classification of grinding media balls and we expressed the opinion that they are correctly classifiable under Chapter Heading 7308.90 of the Central Excise Tariff, while the appellants contended that their correct classification would be under Chapter Heading 7208. The ROM contends that our order was passed without taking into account all the facts set out in the appeal memorandum and papers filed therein. It has been pointed out that Chapter Note 6 of Chapter 84 of Schedule to Central Excise Tariff Act, 1985 is binding in the matter of classification as per Rule 1 of Rules for Interpretation of Schedule and steel balls other than polished steel balls are to be classified under Heading 7308 and not under Heading No. 7208 because Heading No.7208 includes only those products which are only roughly shaped by forging and as such require further processing like machining etc., before use. It submits that the steel balls in question were forged products and did not have a smooth surface and it was, therefore, liable to be classified under Heading 72.08. The application for rectification also submits that our order is not in confirmity with previous orders

on the subject. With regard to this submission, we observe that our order was passed after taking into account submissions made by both the sides as well as the aforesaid Note 6 to Chapter 84.

That being the case, this is not a case (irrespective of the merits of the contention) involving a mistake apparent on the face of the record which could be corrected under a rectification application. What the appellants are seeking amounts to a review of the order which is not permissible. Therefore, we reject the request for reclassification of the steel balls.

2. The ROM also submits that the question of time bar is also attracted in the appeals but our order does not cover this aspect. On this question, we find that our order was dictated in the open court in the presence of the Counsel of the appellant. Therefore, if this point had been taken up during the arguments, the Counsel could have pointed out the same during dictation of the order and the omission could have been omitted. Be that as it may, we find from the appeals that the grounds of appeals contain a hand written entry, "(v) in any event, the demand is time barred". During hearing of the ROM, it was pointed that this ground had been taken in the adjudication proceedings before the Commissioner but the Commissioner has not dealt with this matter, and therefore, the appeal is required to be remanded for a decision on this issue. Since we find that the ground of time bar finds a mention in the appeal petition, we consider it appropriate that our orders are recalled in order to deal with this issue. In this regard, the position is that the issue of time bar was not examined and a finding recorded at the adjudication stage. Therefore, the case is required to be remanded for a decision by the Commissioner on this issue of time bar.

3. The ROM further submits that the appellants should have been allowed the benefit of small-scale exemption and also Modvat benefit in r/o duty paid on inputs, even though these reliefs were not claimed in the appeal petitions or during arguments. Rectification of Mistake applications are limited in scope. Only mistakes apparent on the face of the records can be corrected through them. Eligibility for exemption and Modvat credit are to be claimed and permitted after examination of facts of the case. Since these claims were not raised before, it is

not open for us to deal with them in the ROM application.

4. In view of the aforesaid discussions and findings, the ROM is allowed on the issue of time bar. Consequently, our Final Order Nos.

1154-1157/98-B1, dated 28-7-1998 [1999 (112) E.L.T. 142 (Tribunal)] is modified to the extent of remanding the petitioner's case to the jurisdictional Commissioner for a fresh decision with regard to the issue of time bar.

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