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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-08-2000

Reported in : (2000)(120)ELT393TriDel

Appellant : Rail Tech

Respondent : Commissioner of Central Excise

Judgement :

1. This order will dispose of two appeals, one filed by the assessee and another by the Revenue. Appeal No. E/1797/94-B has been filed by the assessees against the order in original dated 15-06-1994 (issued on 17-06-1994); passed by the Collector of Central Excise vide which he had decided the classification of the products in question (aluminium windows, doors, and their frames) under sub-heading 8607.00 of the CETA and confirmed the duty demand of Rs. 22,59,879.16 for the period 1-8-1993 to 1-1-1994, on them. He, however, had dropped the demand of Rs. 4,51,975.84 against them. The second appeal No. ER/884/95-B had been brought by the Revenue against the order in appeal dated 30-1-1995 passed by the Collector (Appeals) classifying the same products under sub-heading 7610.10 of the CETA by reversing the order in original of the Assistant Collector dated 9-9-1994 who held the classification under sub-heading 8607.00 of the CETA. Since in both the appeals common issue regarding classification of the products in question and consequential demand for duty, is involved, these are being disposed of by common order.

2. The facts giving rise to both these appeals are not much in dispute and these are: 3. The assessees M/s. Rail Tech, Kapurthala are engaged in the manufacture of aluminium windows, doors and their frames and these are solely and principally designed by them for the use in the railway coaches. They vide letters dated 27-12-1992,4-1-1994 and 19-1-1994 were advised by the Superintendent of Central Excise Range, Kapurthala to obtain a Central Excise registration and maintain the Central Excise statutory records on the ground that their products merited classification under sub-heading 8607.00 of the schedule annexed to the CETA. They, however, contested this classification vide letters date 1-1-1994 and 13-1-1994 by pleading that their products were classifiable under sub-heading 7610.10 of the schedule annexed to the CETA. They accordingly cleared the goods during the period 1-8-1993 to 1-1-1994 under that sub-heading without payment of duty in all of Rs. 27,11,855/- as the duty in respect of the products falling under sub-heading 7610.10 of the CETA carried nil rate of duty at that time under Notification No. 180/88-CE. The Revenue accordingly issued show cause notice dated 31-1-1994 through Assistant Collector calling upon them to pay the duty amount of Rs. 27,11,855/- and penal action was also proposed to be taken against them. They, however, contested the correctness of the show cause notice through letter dated 11-4-1994 wherein they alleged that before the commencement of the products in question, they requested the Collector of Central Excise, Chandigarh vide letter dated 16-01-1991 to advise them as to whether their products in question were classifiable under sub-heading 7610.10 of the schedule appended to the CETA and chargeable to nil rate of duty under Notification No. 180/88-CE dated 13-5-1988 and in response to that letter they were informed by the Assistant Collector(Technical) Central Excise Collectorate, Chandigarh vide letter dated 8-10-1991 that the products were classifiable under sub-heading 7610.10 of the CETA and were exempt from duty under the said notification. They were also accordingly informed by the Divisional Assistant Collector, Jullundhur vide letter dated 10-10-1991. They further avered that since the products were manufactured and cleared with the approval of the Excise department under nil rate of duty as per Notification No.180/88-CE., dated 13-5-1988, they did not contravene any provisions of the Central Excises Act or the Rules. They also alleged that later on, on receipt of letter dated 27-12-1993 from the Range Superintendent of Central Excise

regarding the change in the stand of the Excise department regarding classification of the products in question from subheading 7610.10 to 8607.00 of the CETA, they submitted a representation dated 31-01-1994 reiterating that the classification earlier intimated to them was correct, but did not hear any response.

They denied their liability to pay the duty as mentioned in the show cause notice.

4. The Collector did not agree with the contention of the assessees and through order in original dated 15-6-1994 held that the products were classifiable under sub-heading 8607.00 of the CETA and after dropping demand of Rs. 4,51,975.84, confirmed the demand of balance amount of Rs. 22,59,879.60 on the assessees. The assessees have come up in appeal bearing No. E/1797/94-D, against this order.

5. The appeal by the Revenue bearing No. E/884/95-B is the result of order in appeal dated 30-1-1995 passed by the Collector (Appeals) vide which he had reversed the order in original of the Assistant Collector dated 9-9-1994 classifying the products in question of the assessees under sub-heading 8607.00 of the CETA by holding the same classifiable under sub-heading 7610.10 6. The controversy in both these appeals thus centers round the question as to whether products in question (aluminium windows, doors and their frames) manufactured by the assessees are classifiable under sub-heading 7610.10 or 8607.00 of the schedule appended to the CETA. In order to resolve this controversy it would be beneficial to refer to both these sub-headings of the CETA. These sub-headings run as under :-76.10 Aluminium structures(excluding pre-fabricated buildings of heading No. 94.06) and parts of structures for example, bridges, and bridge sections, towers, lattice mastgs, roofs, roofing frame works, doors and windows and their frames and thresh holds for doors, balustrades, pillars and col- umn); aluminium plates, rods, profiles, tubes and the like, prepared for use in structures.7610.10 Doors, windows and their frames and thresh holds for doors.

7. The learned counsel for the assessees has contended that since there is a specific Entry in Tariff sub-heading 76.10 (sub-heading 7610.10) relating to doors, windows and their frames and thresh holds for doors, the products in question of the assessees (aluminium doors, windows and their frames) are squarely covered

by the same and not by the Heading 86.07 of the CETA which covers only parts of railway or tramway locomotive or rolling stocks. He has further argued that even otherwise, the specific entry contained in subheading 7610.10 of the CETA has to prevail over the general entry in the subheading 86.07 of the CETA. Therefore, the impugned order of the Collector dated 15-6-1994 in the appeal of the assessees, is legally incorrect, while that of Collector(Appeals) dated 30-01-1995 in the appeal of the Revenue classifying the products in question under Heading 76.10 (sub-heading 7610.10) of the CETA is correct and deserves to be maintained.

8. The SDR, on the other hand, while refuting this contention of the counsel, has contended that the aluminium windows, doors and their frames manufactured by the assessees are not meant for use as parts of aluminium structures, but only as parts of railway coaches, as these are designed specially for that purpose. Therefore, they are classifiable only under Heading 86.07 and not under Heading 76.10 of the CETA. The impugned order of the Collector (Appeals) dated 30-01-1995 deserves to be set aside while that of Collector dated 15-06-1994 should be maintained.

9. The bare perusal of Tariff heading 76.10 shows that it covers aluminium structures and parts thereof. The entry "windows and their frames" in the bracketed words, in this Tariff Heading refers only to the parts of the structure. Even the aluminium, plates, rods, profiles, tubes and the like, had been referred to in this Tariff Heading as the ones prepared for use in structures. Similarly, the entry in the sub-heading 7610.10 of this Tariff Heading, regarding doors, windows and their frames and thresholds for doors refers to the ones which are meant for use in the structures as this entry is contained in the sub-heading of the main tariff heading 76.10 of the CETA. The entries in the Tariff heading and sub-heading have not to be read distinctively but collectively and in such a manner that the entry in the main Tariff Heading 76.10 does not become superfluous, redundant or in any manner isolated from its sub-heading entry. Therefore, only those doors, windows and their frames and threshold for doors, would be covered by sub-heading 7610.10 of the CETA which have relevance and use in the structures and not others.

10. In the instant case, admittedly, aluminium doors and windows manufactured by the assessees have no use or relevance in the structures. These are being manufactured by them on the drawings and specifications provided to them, by the railways, for their sole use in the railway coaches. These aluminium windows and doors, as not disputed by the counsel before us, are neither marketable in the market nor can be used in any structure. He has rather fairly conceded that these can be solely used in the railway coaches. That being so, it can be safely concluded that these are parts of the railway classifiable under Tariff Heading 86.07(sub-heading 8607.00) of the Tariff. The principle that specific tariff entry has to prevail over the general entry, is not attracted in this case. The view taken in the impugned order dated 15-06-1994 by the Collector (which is the subject matter of the appeal of the assessees) is legally correct and no fault can be found with the same.

11. In the light of the discussion made above, the view taken by the Collector(Appeals) in his order dated 30-05-1995(the subject matter of the appeal filed by the Revenue) classifying the products in question under subheading 7610.10 of the CETA cannot be subscribed being not legally sound. He had wrongly reversed the order in original of the Assistant Collector dated 9-9-1994 who classified the products under sub-heading 8607.00 of CETA. The Collector (Appeals) had lost sight of the fact that aluminium windows and doors and parts thereof manufactured by the assessees were not those which were capable of being used as aluminim structures in order to merit classification under Heading 76.10 (sub-heading 7610.10) of the CETA. These goods have no application or utility elsewhere than in the railway coaches. These are being manufactured by the assessees admittedly, for the railway coaches on the specifications and designs furnished to them, by the Railway. Therefore, these goods are classifiable only under Heading 86.07 (sub-heading 8607.00) of the CETA as parts of railway and not under Heading 76.10(sub-heading 7610.10) of the CETA. The order of the Assistant Collector classifying these goods under sub-heading 8607.00 of the CETA should have been confirmed by the Collector(Appeals) instead of reversing the same. Consequently, the impugned order of the Collector(Appeals) dated 30-01-1995 cannot be allowed to stand and deserves to be quashed. In similar circumstances in the case of CCE Bombay v. Fykays Engg. P. Ltd. decided vide

Final Order No. 125/2000-B, dated 25-1-2000 [2000 (116) E.L.T. 341 (Tri.)], the Larger Bench of the Tribunal while deciding the issue regarding the classification of the mineral insulated thermo couple leads solely and principally meant for the function of pyrometers took the view that the same were to be classified along with the pyrometers and not independently. The analogy of the law laid down in that case by the Larger Bench fully applies to the facts of the present case also.

12. Consequently, the impugned order in original dated 15-06-1994 (appealed against by the assessee) so for as it relates to the classification of the products in question under sub-heading 8607.00 of the CETA, is confirmed, while order dated 30-01-1995 of the Collector (Appeals) (appealed against by the Revenue) classifying the products under sub-heading 7610.10 of the CETA is set aside (sic) appealed against by the assesses) cannot be legally sustained. The Collector himself in para 20 of the impugned order had observed that the assessees were informed vide letter dated 8-10-1991 by the Assistant Collector (Technical) Central Excise, Chandigarh and also by the Divisional Assistant Collector, Jullundhur vide letter dated 10-10-1991, in response to their letter dated 16-9-1991 which they sent before the commencement of the production of the goods in question seeking advice regarding the classification that their products were classifiable under sub-heading 7610.10 of the CETA and attracted nil rate of duty under Notification No. 180/88-C.E., dated 13-5-1988. They accordingly acted on those letters and manufactured and cleared the goods without payment of duty during the disputed period. Therefore, when later on the duty demand through show cause notice dated 31-1-1994 was raised from them by the Excise department after resiling from the earlier stand, assessees should have been allowed Modvat credit in respect of the duty paid inputs used by them in the manufacture of the products in question and also the benefit of the relevant Notifications being SSI unit for the reason that they would have been entitled to these benefits if they were not initially misled/misinformed by the Revenue department itself about the classification of their products under sub-heading 7610.10 and not under sub-heading 8607.00 of the CETA as now claimed by them. Therefore, the duty liability of the assessee deserves to be worked out again after allowing the Modvat credit and the benefit of the relevant notifications as SSI unit without raising any if and buts/objections, regarding strict compliance with any procedural rules/law for claiming these

benefits as technicalities cannot be allowed to stand in the way of justice. Moreover, by disallowing both these benefits to the assessees, would tantamount to allowing the Excise department, to take advantage of the wrong of their officials which they committed initially by wrongly intimating the assessees regarding classification of their products and availability of benefit of Notification No. 180/88-C.E. dated 13-5-1988 and thereby causing miscarriage of justice. But the law specifically prohibits so.

Therefore, the part of the impugned order of the Collector dated 15-6-1994 confirming duty demand of Rs. 22,59,879.16 on the assessee is ordered to be set aside. The duty amount shall be requantified accordingly after allowing them benefit of the modvat credit and other benefits as SSI unit, under the relevant Notifications/rules etc. as discussed above.

14. Consequently, appeal No. E/884/95-B of the Revenue is accepted and the impugned order of the Collector (Appeals) dated 30-01-1995 regarding classification, is set aside, while the impugned order of the Collector dated 15-6-1994 in appeal No. E/1797/94-B of the assessees so far as it relates to classification is affirmed, but regarding the confirmation of the duty demand, the same is set aside and the matter is sent back to the adjudicating authority for working out the duty amount afresh after allowing the benefit of modvat credit and of the relevant notifications/rules to the assessees as SSI unit as observed above. This appeal of the assessees accordingly stands disposed of.

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