Commissioner of Central Excise Vs. U.P. Steels

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-07-2000

Reported in : (2000)(121)ELT693TriDel

Appellant : Commissioner of Central Excise

Respondent : U.P. Steels

Judgement :

1. This appeal has been filed by the Revenue against the order-in-original dated 4-11-93 passed by the Collector of Central Excise vide which he had dropped the proceedings drawn against the respondents on the strength of show cause notice dated 18-6-93 for recovery of duty amount of Rs. 72502.69.

3. The respondents were served with show cause notice dated 18-6-93 for recovery of the duty amount of Rs. 72502.69 under proviso to Section 11-A of the Central Excises Act, 1944 for having violated the provisions of Rule 9(1), 173-P, 173-F and 173-G(1) of the Central Excise Rules on the allegations that they filed the classification list for the products falling under Chapters 72 and 73 without mentioning the exact description by simply declaring the products as "other cast articles of Steel" under Heading 73.25 of the CETA and they also made misstatement of the facts as the products manufactured by them were found to be specifically made, according to the specifications and drawings of the consumers, but they failed to so mention in their classification list. The correctness of the show cause notice was contested by the respondents wherein they alleged that they were manufacturing only castings of the steel falling under Heading 73.25 of the

CETA according to the specifications received and no finishing or machining was done by them. The Collector accepted their version and ordered the withdrawal of the show cause notice through the impugned order.

4. The learned JDR has assailed the validity of the impugned order mainly on the ground that from the letter of M/s. Trimurti Engg. Work, Muzaffarnagar dated 11-2-92 read with the statement dated 14-5-92 of Shri V.K. Goel, Senior Manager of the respondents, it was quite evident that the respondents did not manufacture rough shape castings but the castings which could be termed as "machine parts" without carrying out any further machining thereon. But the Collector has wrongly ignored this piece of evidence and as such his impugned order deserves to be set aside.

5. On the other hand, while refuting this contention of the learned JDR, the counsel has contended that the letter dated 11-2-92 of M/s.

Trimurti Engg. Works and the statement of Shri V.K. Goel referred by the learned JDR, do not in any manner advance the plea of the Revenue for providing that the castings manufactured by the respondents were not unmachined but complete machine parts requiring no further machining or processing for putting them to use. The order of the Collector is perfectly valid.

7. Admittedly the classification list of the respondents effective from 23-6-88 wherein they described the gods in question as "other cast articles of steel" falling under Heading 73.25 of the CETA was approved without any objection by the competent authority. On enquiry-cum-direction contained in the letter dated 21-7-88 appended to the show cause notice, by the Assistant Collector for giving correct description of the goods in column 2 of the classification list, they vide their letter dated 24-11-88 categorically replied that they manufactured rough shaped castings which did not attain character of cast articles under Chapters 84, 85, 86 and 87 of the CETA. On receipt of their reply, no further action was taken before issuance of the impugned show cause notice.

7. The letter dated 11-2-92 of M/s. Tribunal Engg. Works on which heavy reliance has been placed by the learned JDR for assailing the validity of the impugned of the Collector, does not in any manner advance the plea of the Revenue. The bare

perusal of this letter show that M/s.

Trimurti Engineering Works informed the Superintendent of Central Excise that the castings supplied to them by the respondents were further supplied by them to Khanpur Sugar Mills, Dhuri (Punbja) as machine parts after machining the same. In this letter it was nowhere admitted by that firm that the castings supplied to them by the respondents were complete machine parts and that they without carrying further machining supplied the same to Khanpur Sugar Mills, Dhuri.

Similarly V.K. Goel, Senior Manager of the respondents in his statement did not make any admission to the effect that the castings supplied by them to M/s. Trimurti Engineering Works were in fact machine parts and not rough castings. Rather he in his letter dated 14-5-92 clarified the stand of the respondents that they were not manufacturing machinery parts but only rough castings which required further machining before could be put to use as machinery parts. Therefore, neither the letter dated 11-2-92 of M/s. Trimurti Engineering Works nor statement of Shri V.K. Goel, Senior Manager of the respondents is of any avail to the Revenue for proving that the respondents indulged in the manufacture of machine parts and not rough castings of steel falling under Chapter Heading 73.25 of the CETA. The initial burden was on the Revenue to prove that the castings manufactured by the respondents were covered by Chapters 84 to 87 of the CETA but they had failed to discharge this burden. The Collector has, therefore, rightly accepted the plea of the respondents and that the rough castings manufactured by them were classifiable under Chapter Heading 73.25 of the CETA.8. In view of the discussion made above, the impugned order of the Collector is perfectly valid and there exists no cogent reasons to disagree with the same. Consequently, there is no merit in the appeal of the Revenue and the same is ordered to be dismissed.