Engineering Tooling Equipment Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/19762

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-16-2000

Reported in : (2001)(95)LC545Tri(Mum.)bai

Judge : J T J.H., G Srinivasan

Appellant : Engineering Tooling Equipment

Respondent : Cce

Judgement :

1. The issue involved in this case is the classification of products described as: The assessees claimed that these would continue to fall under heading 7304 as tubes pipes etc. The ground was that the activity of threading ends of the pipe either internally or externally did not amount to manufacture. The second ground taken by the assessees is that the sub notes of the HSN, to heading 73.04 specifically made for inclusion therein of line pipes, drill pipes etc. used in drilling for oil or gas. The department insisted that going by the use the goods would classify under heading 84.31 as identifiable parts of drilling machinery falling under heading 84.30. Here also the HSN Note 1(h) of Section XVI of the Central Excise Tariff Act comes to their rescue. The note holds that drill pipes would not be covered under that section but would fall under the parent heading 73.04. The HSN sub-notes to heading 84.31 also excludes from the coverage thereof casings, tubes and drill pipes and suggest their inclusion under heading 7304.

2. The basic issue however is whether threading etc. would amount to manufacture. We have seen the Tribunal Judgement in the case of CCE, Pune v. Vulcan Laval Ltd. which is in favour of the assessees. We find that it is hazardous to apply the ratio of any judgement pertaining to the old tariff when the entire system of nomenclature has undergone a sea change and when fresh case law is available. Similarly we find it difficult to follow the judgement in the case of Prabhat Sound Studios v. Additional Collector of Central Excise . Firstly the goods are not identical and secondly it would appear that the judgement in the case of Gramophone Co, of India Ltd. v. Collector of Customs would seem to give a different ratio.

3. In our order C-II/1525-1533/WZB/1999 dt. 22.6.1999, we had directed the Assistant Commissioner to go into the aspect of the actual processes undertaken and performed. We had directed him to list each process and to state very clearly whether the process went beyond mere threading and also to apply Vulcan Level Ltd. judgement. In his de novo order the Assistant Commissioner states that he had visited the factory and that he was satisfied of the processes amounting to manufacture without listing the process and without giving valid grounds for this conviction. The Tribunal's directions were extremely clear the Tribunal wished to see the process undertaken on the parent pipe through the eyes of the Assistant Commissioner. The Assistant Commissioner was free to Rule on the issue after putting on paper his findings. The process as seen by him this would have enabled the Tribunal to judge whether the process did amount to manufacture or not and whether in the light of the finding Assistant Commissioner was correct or not. Although we have seen the products we are extremely handicapped in deciding the case, in view of the incorrect manner in which the Assistant Commissioner went above following the Tribunal's order.

4. The issue whether after the process the goods would continue to fall under Chapter 74 or whether they would merit classification under heading 84, depends upon whether the process amounted to manufacture.

The Ld. Commissioner also failed to see the scope of inquiry the Tribunal had entrusted to the Assistant Commissioner and without examining the process

himself he went about distinguishing the various processes holding that some of them did not amount to manufacture.

5. We therefore, allow the appeal and remand the proceedings back to the Jurisdictional Assistant Commissioner with the strict direction that he should strictly follow our instructions given in our cited order.