Commissioner of Central Excise Vs. Vimal Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-05-2000

Reported in : (2001)(127)ELT837TriDel

Appellant : Commissioner of Central Excise

Respondent : Vimal Industries

Advocate for Def. : Shri. Lakshmikumaran

Judgement :

1. This is an appeal filed by the Revenue. Arguing for the Revenue Shri M.P. Singh, JDR submitted that the dispute is in respect of classification of cast iron castings. They are appropriately classifiable under heading No. 73.25 in view of the rulings given by the Tribunal in the case of Shivaji Works Ltd. v. CCE reported in 1994 (69) E.L.T. 674. He said that the Assistant Collector did not follow the circulars issued by the Department in the context that judicial pronouncements over-ride circulars. He said that in the instant case, the decision of the Tribunal is contrary to the Circular issued by the Board and the decision of the Tribunal is binding. In support of this contention that judicial pronouncements over-ride the circulars issued by the Department, he heavily relied upon the decision of the Supreme Court reported in 2000 (119) ELT 513. He said that Tribunal has categorically held in the case of Shivaji Works (supra) that item in question is classifiable under sub-heading 73.25.

2. On the other hand, Shri Lakshmikumaran appearing for the respondents submitted that dispute is not in respect of the classification but with reference to the exemption in terms of Notification No. 46/94 and 56/95. He drew our attention to the relevant show cause notice wherein it was proposed that exemption is not available to the machinery parts covered by tariff subheading 84.33, 8485.90. He said that the Department has accepted that these items are classifiable under heading 84 and once they are classifiable under heading 84, they are exempted in terms of respective Notification. He referred to SI. No. 25 of the Notification No. 56/95 to show that parts of goods specified at SI. No.17, 21 and 24 are exempted if the items fall under heading 84.

Department never disputed about the classification of the products in question as can be seen from the show cause notice but proposed to deny the exemption. He said that Assistant Collector erred in going beyond the show cause notice in classifying the items under heading 73.

3. Shri M.P. Singh submitted that classification is a question of law that can be raised at any stage and in view of his contention he referred to the decision of the Tribunal in the case of Matador Foam and Ors. v. CCE Kanpur reported in 1999 (32) RLT 906. Furthermore in the instant case matter should not be confined to the show cause notice since Assistant Collector has decided the issue of classification in his order. The Commissioner (Appeals) has not decided the issue on point of jurisdiction but decided following the earlier circulars issued by the Board. In reply Shri Lakshmi Kumaran submitted that question of classification cannot be agitated at this stage.

Furthermore no plea has been taken with reference to the classification even in the grounds of appeal. In support of his contention, he referred to the decision of the Apex Court in the case of Collector of Central Excise, Kanpur v. Flock (India) Pvt. Ltd. reported in 2000 (120) E.L.T. 285 wherein it was held that "where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that adjudicating authority had committed an error in passing the order".

4. We have carefully considered the matter. We find that show cause notice dated 22-6-1996 proposes to deny the benefit of exemption in terms of Notification No. 56/95. The Department has come up in appeal on the ground that the Commissioner (Appeals) should have followed the decision of the Tribunal in deciding the issue of classification.

Classification matter as such is not in dispute since there was no charge of wrongly classifying the item as can be seen from the show cause notice. The adjudicating authority was not supposed to go beyond the show cause notice as it was rightly argued on behalf of the assessee. Though classification is a question of law as urged by the Departmental Representative but the question has to be decided depending upon the facts of the case. Since the relevant facts are not forthcoming in the show cause notice or in the grounds of appeal, they cannot be urged at this stage. In the facts and circumstances of the case, we find that appeal filed by the Department is not sustainable for the reason that Assistant Commissioner has gone beyond the jurisdiction of show cause notice. The order passed by the Assistant Collector is merged with the Order-in-Appeal passed by the Commissioner (Appeals). In the view taken, we dismiss the appeal.