

Ashoka Foundry Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-14-1985

Reported in : (1985)(5)LC1767Tri(Delhi)

Appellant : Ashoka Foundry

Respondent : Collector of Central Excise

Judgement :

1. The appellant has filed this appeal against Order-in-Original dated 26-7-1983 passed by Shri Surjit Singh, Collector of Central Excise, Patna. By the said order, the Collector inter alia held that the appellant's product blast furnace cooling members made out of duty paid copper casting after further machining and known as monkeys, tuyers, nozzles and the like were excisable under Tariff Item No. 68 of the Central Excise Tariff and did not continue to fall under Item 26A as claimed by the appellant.

2. The proceedings against the appellant are the outcome of a visit by Central Excise Officers to the appellant's factory and institution of a case against the appellant. (It is not possible to make out the exact date of the Superintendent's visit from the material on record). This led to registration of a case against the appellant by the Central Excise Department and notice dated 27-4-1982 alleging contravention of Section 6 of the Central Excises and Salt Act, 1944 read with Rules 174, 9(1), 52A, 173B, 173C, 173F, 173G(1) and 173G(3) of the Central Excise Rules, 1944 by manufacturing blast furnace and steel plant equipment namely tuyers, monkeys, nozzles by machining the castings.

The other allegation was that these goods were classifiable under Tariff Item 68 and the appellant evaded duty to the extent of Rs. 3,62,933-19 paise between the period 1-4-1978 and 30-11-1980. The appellant was called upon the show cause why duty and penalty be not recovered. The appellant filed reply to the notice denying the allegations. It was inter alia pleaded that the Assistant Collector of Central Excise, Dhanbad, who was the proper officer for the purpose of approving classification had on 29-4-1981 held that castings produced by the appellant did not attract duty under Tariff Item No. 68. The notice dated 27-4-1982 issued by the Superintendent was challenged to be without jurisdiction. It was further submitted that the order of the Assistant Collector could not be set aside and the matter reopened without the procedure stipulated in Section 35A (as it then stood) of the Central Excises and Salt Act, 1944 (hereinafter called the Act) having been followed. After following the usual procedure the learned Collector by impugned order held that the due process of law for revising the decision by the Assistant Collector had been followed. He held that the product castings after processing by the appellant were assessable goods under Tariff Item 68 liable to duty thereunder. He, however, restricted the demand to a period of six months preceding the date of show cause notice. He ordered the Assistant Collector to work out the demand as per the guidelines set out in his order. It may be stated that as per this direction the Assistant Collector worked out the revised demand against the appellant at Rs. 3,49,569.94 paise. This demand is the subject matter of another appeal No. 2345/84-B, which is being disposed of and allowed by a separate order of even date.

3. At the hearing of the appeal Shri Beri, learned Advocate for the appellants, submitted that the appellant had been subjecting casting to the processes for a number of years and this was within the knowledge of the Department. The Assistant Collector of Central Excise who had jurisdiction in the matter had been addressed in this connection by the appellants. A statement dated 22nd June, 1979 titled 'Details of Information' regarding total value of machine parts equipments and clearance of M/s. Ashoka Foundary was filed. In this statement, against the item-name of goods manufactured, copper castings, i.e. tuyers, monkey, nozzles coolers and other products of the appellant are mentioned. The date of starting production is given as 24th June, 1975.

Shri Beri in particular submitted that the Assistant Collector having jurisdiction had visited the appellants factory on 25-3-1981 and himself examined the products and held that they would not attract further duty under Tariff Item 68. This order dated 20-4-1981 of the Assistant Collector was communicated to the appellants by the Superintendent of Central Excise, Bokaro Steel City by letter dated 29-4-1981. Shri Beri submitted that the Collector of Central Excise, was in fact, reviewing the order dated 20-4-1981 communicated to the appellant by letter dated 29-4-1981 by Superintendent (Annexure 3 of the Memo of appeal) of the Assistant Collector of Central Excise, Dhanbad. This the Collector could not do because no notice, as required under Section 35A (as it then stood) had been served upon the appellant. Even otherwise the notice served was beyond the time limit stipulated in the provision. Thus, he submitted that the entire proceedings and the order passed by the Collector of Central Excise were. without jurisdiction null and void.

4. He also submitted that even otherwise on merits appellant's products continue to fall for assessment under Central Excise under Tariff Item 26A and not under Tariff Item 68 as claimed by the Department and held by the Collector of Central Excise. Shri Beri during course of arguments, referred to a number of decisions which if necessary, would be referred to at the appropriate place.

5. On behalf of the respondent, Shri S.C. Rohtagi, Departmental Representative strongly defended the orders passed by the lower authorities. He however, submitted that if the order of the Collector be set aside on the ground that it was a review of the order of the Assistant Collector and action for doing so had been commenced after expiry of time limit set out under Section 35A, the classification ordered by the Collector should operate prospectively.

6. It may be mentioned that there was no dispute on the point that if the Collector's order be held to be a review of decision dated 20-4-1981 of the Assistant Collector of Central Excise, Dhanbad, holding the appellants product to be hot classifiable under Tariff Item 68, the entire demand against the appellant would have to be set aside.

7. We have, therefore, first to determine whether the order in original dated 26-7-1983 passed by Collector of Central Excise is in fact a review within the meaning

of Section 35A of the Act (as it then stood) of the decision dated 20-4-1981 of the Assistant Collector of Central Excise, Dhanbad communicated to the appellants by the Superintendent of Central Excise, Bokaro Steel City by his communication dated 29-4-1981.

8. The Departmental Representative was not able to show us any provision whereby the Collector of Central Excise, while decision dated 20-4-1981 of the Assistant Collector holding that the appellants product were not classifiable under Tariff Item 68 was subsisting, could commence fresh proceedings without the order of the Assistant Collector having been set aside. It was not seriously disputed that the order dated 26-7-1983 of the Collector was in fact a review of decision dated 20-4-1981 of the Assistant Collector of Central Excise, Dhanbad.

In fact, the Collector himself in his order deals with this objection of the appellant in the following words : "The assessee has also produced a letter dated 29-4-1981 of the Superintendent of Central Excise, Bokaro Steel City, Communicating the decision of the then Assistant Collector. The then A.C. had held that the goods in this case are castings and will not attract further duty under Tariff Item 68. The Department has represented that the above order of the A.C. was not correct. Therefore, it is necessary that this order should be revised. For revising this decision, due process of law has been gone through, i.e. a show cause notice has been issued to the assessee, reasonable opportunity has been given to him for presenting his case and he has also been heard in the matter. It is necessary that the earlier wrong decision of the A.C. should be changed for which the reasons have already been given above. The above decision of the A.C. is, therefore, set aside.

It would be seen that the Collector of Central Excise himself held that his order was a review of the decision dated 20-4-1981 of Assistant Collector of Central Excise. We must, therefore, proceed on the premise that the order of the Collector of Central Excise purported to be a review of the Assistant Collector's decision.

9. It has next to be seen whether the limitation and procedure prescribed under Section 35A of the Act (as it then stood) which dealt with revisionary powers of Board of Collector have been complied with.

The relevant portions of Section i.e. Sub-sections (2) to (4) are extracted below :-
"(2) The Collector of Central Excise may, of his own motion or otherwise, call for and examine the record of any proceeding in which any decision or order has been passed under this Act or the rules made thereunder by a Central Excise Officer subordinate to him (not being a decision or order passed on appeal under Section 35) for the purpose of satisfying himself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as he thinks fit.

(3) (a) No decision or order under this section shall be varied so as to prejudicially affect any person unless such person is given a reasonable opportunity of making a representation and, if he so desires, of being heard in his defence, (b) Where the Board or, as the case may be, the Collector of Central Excise is of opinion that any duty of excise has not been levied or has been short-levied or erroneously refunded, no order levying or enhancing the duty, or no order requiring payment of the duty so refunded, shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in Section 11 A. (4) No proceedings shall be commenced under this section in respect of any decision or order [whether such decision or order has been passed before or after the commencement of the Customs, Central Excises and Salt and Central Board of Revenue (Amendment) Act, 1978] after the expiration of a period of one year from the date of such decision or order." 10. The show cause notice to the appellants is dated 27/29-4-1982. The order of the Assistant Collector produced in the communication of Superintendent, dated 29-4-1981 is dated 20-4-1981. Under Sub-section (4) of Section 35A of the Act, extracted above, it would be seen that the review proceedings could not be commenced after expiry of period of one year from the date of Assistant Collector's decision. The proceedings must therefore be held to be time-barred. As to the argument of the Departmental Representative that the order dated 20-4-1981 of the Assistant Collector was contained in communication dated 29-4-1981 of the Superintendent of Central Excise and, therefore, the date of the order be held to be 29-4-1981 and thus viewed the show cause notice dated 27/29-4-1982, should be held within limitation, we find that even this argument is not acceptable. We have seen the show cause notice and to us it appears to be a notice alleging

that duty of excise has not been levied. Sub-section 3(b) extracted above which provides for time limit specified in Section 11A of the Act for such show cause notice has been dealt with by Delhi High Court in Associated Cement Co. Ltd. v. Union of India 1981 ELT 421, which has been followed by Bombay High Court Corn Products (P) Limited and Other, v. Union of India and Another - 1984 (16) ELT 177 (Bom.).

11. Now dealing with the revisionary powers of Central Excise in similar matters, the High Court held that time limit specified in Section 11A would mean a period of six months from the date of the order* The decision was followed by us in M/s. Steel Rolling Mills of Hindustan Pvt. Ltd. v. Collector of Central Excise, Calcutta, Order No.333/84-B, dated 12-4-1984. Thus in any view of the matter, the show cause notice dated 27/29-4-1982 for reviewing the order dated 20-4-1981/29-4-1981 of the Assistant Collector of Central Excise must be held barred by limitation and on this ground alone, the order of the Collector deserves to be set aside.

12. Shri Rohatgi argued that even if the order of the Collector reviewing Assistant Collector's order be held time-barred, it be held good prospectively for Classifying the goods under Tariff Item 68, otherwise problems might arise for the revenue. The Collector got jurisdiction in the matter because he purported to exercise the powers of review and that exercise we have held to be barred by limitation. We do not see how we could say that the review order of the Collector which we have found to be beyond limitation and thus without jurisdiction could be said to operate prospectively to the extent it relates to classification. As to problem of revenue, it is not for us but for the officers of the Revenue to see as to how best they can safeguard the same. As a result, the impugned order is set aside and the appeal allowed.

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