Fag Precision Bearings Ltd. Vs. Commissioner of Central Excise,

Fag Precision Bearings Ltd. Vs. Commissioner of Central Excise,

SooperKanoon Citation : sooperkanoon.com/21101

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-26-2001

Reported in : (2001)(76)ECC202

Appellant : Fag Precision Bearings Ltd.

Respondent : Commissioner of Central Excise,

Judgement :

1. Although appeal 1485/96 was listed to day, on the counsel for the appellant mentioning that the demand for duty assailed in this appeal is a direct result of a classification challenged in appeal 1004R/96, that appeal was also taken up for hearing to day and decided.

2. Appeal 1485/96 is against the order of the Commissioner confirming two demands for duty issued to the Fag Precision Bearing Ltd. the appellant before us, on the ground that the "rerailing equipment" manufactured by the appellant is liable to duty at 15% ad valorem, and not 10% as claimed by the manufacturer. This order follows out of the order assailed in the order appeal, in which the Commissioner has held this equipment has to be classifiable under heading 84.31 and not, as claimed by the manufacturer, under heading 84.79 of the tariff.

3. The show cause notice issued to the appellant proposed confiscation of the goods under heading 84.25 on the ground that they were jacks.

The Commissioner has held the goods to be classifiable under heading 84.31 as parts of such jacks. The classification claimed by the appellant is as machines and mechanical appliances having independent functions not specified or included elsewhere included in this chapter.

4. The goods in question are described as "equipment for rerailing and uprighting rolling stock of any design gauge as well as for clearing the track". Although a jack or jacks may be essential component of this equipment in order to lift and to lower the railway rolling stock, on which it works, it may also be required to carry out other operation, such as placing it on the rails, setting upright and transporting it.

Such transport from all the track and equipment and vice versa. Whether and to what extent such equipment contributes to the functioning of the equipment for lifting and lowering the rolling stock and thus influences its classification will have to be considered. In the absence of clear details of all the parts involved, and the manner in which they function together in achieving the objective of the machine, it was not possible for us to decide upon its classification.

5. The counsel for the appellant undertakes to produce before the Commissioner an affidavit from the concerned expert of the organisation describing clearly the nature of each component, and the manner in which these components work, supplemented, if necessary, by illustration or video film. We are of the view that the Commissioner should consider this evidence, and the evidence that the department may adduce, and decide upon the classification and the liability afresh in accordance with law.

6. Accordingly, these appeals are allowed and the impugned orders set aside.