

Collector of Central Excise Vs. Simco Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-10-1985

Reported in : (1986)(6)LC343Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Simco Industries

Judgement :

1. The respondents M/s. Simco Industries, Bhavnagar are manufacturers of Brass Lamp Holders. Under directions of the Superintendent they obtained Central Excise licence for the manufacture of the subject goods under Tariff Item 68 of the Central Excise Tariff. After drawal of samples, the Superintendent informed them that the Brass Lamp Holders manufactured by them would be classifiable under Tariff Item 61 of the Central Excise Tariff and they should obtain licence accordingly. The respondents objected to the same. The Assistant Collector went into the matter and under order dated 19-9-1979 held as follows :- "I hereby order that the Lamp Holders manufactured by M/s. Simco Industries, Bhavnagar are classifiable under Tariff Item No. 61 and the jurisdictional Superintendent, Central Excise would complete rest of the formalities.

The above order is restricted to the matter of classification of the product manufactured by M/s. Simco Industries, Bhavnagar and has no bearing on other issues, whatsoever, under the provisions Central Excise Rules." The respondents appealed to the Collector of Central Excise (Appeals) who under his order dated 7-10-1981 allowed the appeal and set aside the order of the Asstt. Collector.

Subsequently, on 18-6-1982 the Central Government issued notice under Section 36(2) of the Central Excises and Salt Act proposing to set aside the order in appeal and pass such orders as it may deem fit after considering the submissions made by the respondents. It is the proceedings initiated under the said show cause notice that, on transfer, are being dealt with as an appeal preferred before this Tribunal.

2. We have heard Shri K. C. Sachar, Junior Departmental Representative for the department Shri Y. D. Tiwari, Advocate, for the respondents.

3. At the commencement Shri Tiwari raised a preliminary objection that the show cause notice had been issued beyond the time prescribed therefor and for that reason itself the proceedings must fail. His contention was that it is the third proviso to Section 36(2) that should apply to the facts of the present case and the show cause notice should have been issued within six months from the date of the appellate order. He contended that as the show cause notice was admittedly issued beyond the said six months period the further proceedings following the same are not valid. On the other hand, Shri Sachar contended that the case is governed by the second proviso to Section 36(2) and the show cause notice having been issued within the one year period prescribed thereunder the proceedings had been validly initiated.

"The Central Government may, of its own motion or otherwise, call for and examine the record of any proceedings in which any decision or order has been passed under Section 35 or Section 35A of this Act for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it think fit; Provided that no decision or order 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 ; Provided further that no proceedings shall be commenced under this sub-section in respect of any decision or order (whether such decision or order has been passed before or after the coming into force of this subsection) after the expiration of a period of one year from the date of such decision or order ; Provided also that where Central Government 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 11A." It may be seen that the third proviso would be attracted only when any duty of excise which has not been levied or short-levied is to be demanded in pursuance of the order that may be passed on the basis of the show cause notice. In the present instance the order of the Asstt.

Collector was only with reference to the classification issue and it had been made clear under the order itself that the other issues that may arise therefrom (presumably including demands for duty, etc.) were not dealt with under the said order. It is, in fact, stated by Shri Tiwari that separate proceedings were initiated in respect of demand for short levied duty, following the order of the Assistant Collector above said, and the said proceedings are now pending in appeal before the Collector (Appeals). It is, therefore, clear that so far as the present proceedings are concerned, they related to the question of classification only and were, therefore, covered by the second proviso and not the third proviso to Section 36(2). In view of these facts we over-ruled the preliminary objection raised by Shri Tiwari.

5. So far as the classification issue is concerned it may be noted that the same is covered by an earlier order of this Tribunal in the case of M/s. Bombay Switchgears v. Collector of Central Excise, Bombay-I (1984 E.C.R. 2366). It had been held therein that Lamp Holders are classifiable under Tariff Item 61 of the Central Excise Tariff. Apart from this Shri Sachar further pointed out that this question of classification of Lamp Holders had come up for consideration before the Punjab and Haryana High Court in the case of Ajanta Electrical v. Collector of Central Excise (1982 Taxation Law Report 2815) and that the High Court had held that Lamp Holders are classifiable under Tariff Item 61, C.E.T. Shri Sachar contended that the view of these decisions the contention for the respondents that Lamp Holders are classifiable under Tariff Item 68 has to be rejected.

6. Shri Tiwari pointed out that this Tribunal in its decision above cited had proceeded on the basis that Lamp Holders would be classifiable under Tariff Item 61 on the ground that they would fall within the term "Sockets" mentioned in Tariff Item 61 but that this conclusion was contrary to the judgment of the Punjab and Haryana High Court as seen from paragraph 6 of the judgment of the High Court. He pointed out that the High Court had held- "I therefore hold that Lamp Holders are not included in the terms 'plugs, switches and sockets," He, therefore, contended that the judgment of this Tribunal being contrary to the findings in the judgment of Punjab and Haryana High Court ought not to be followed. He further contended that the final decision of the High Court was on the interpretation of the word "namely" in Tariff Item 61 but that the said interpretation is incorrect. In support of this contention he relied on the decision of this Tribunal in Delta Spokes Manufacturing Company v. Collector of Central Excise, Bombay (1983 E.L.T. 547). Thus, in effect Shri Tiwari wanted to distinguish the judgment of this Tribunal as well as the judgment of the Punjab and Haryana High Court on the question of classification and he invited us to hold that the subject goods would not fall under Tariff Item 61 since (1) they would not be "switches, plugs and sockets, all kinds" and (2) the tariff entry related to these "switches, plugs and sockets, all kinds" only and not to other electrical lighting fittings.

7. It was stated by Shri Sachar as well as Shri Tiwari that excepting the judgment of the Punjab and Haryana High Court (which does not appear to have been cited before the Bench which heard and disposed of the earlier matter) they were not aware of any other judgment of any High Court on the question of classification of Lamp Holders. In such a case, it has been the consistent practice of this Tribunal to respectfully follow the judgment of the High Court, in the absence of any contrary decision by any other High Court. Therefore, in the present instance also, even without reference to the earlier judgment of this Tribunal (cited above), the proper course for us would be to follow the judgment of the Punjab and Haryana High Court in rendering our decision. The course suggested by Shri Tiwari, that we should accept the finding of the High Court in paragraph 6 of their judgment but not follow the ultimate decision (because the reasonings given in the subsequent paragraphs of the judgment of the High Court are not correct) would not be the proper course for us to follow. Therefore, even without reference to the earlier

judgment of this Tribunal we are bound to follow the Punjab and Haryana High Court and hold that Lamp Holders would be classifiable under Tariff Item 61, Central Excise Tariff. In arriving at this classification we derive further strength from the earlier judgment of this Tribunal which was also to the same effect.

8. Accordingly, we hold that the Lamp Holders manufactured by the respondents are classifiable under Tariff Item 61 Central Excise Tariff. We accordingly allow this appeal, set aside the order of the Collector (Appeals) and restore the order of the Assistant Collector.

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