

Commissioner of Central Excise, Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-11-2001

Reported in : (2001)(138)ELT1216Tri(Mum.)bai

Appellant : Commissioner of Central Excise,

Respondent : Commissioner of Central Excise,

Judgement :

1. This order seeks to dispose of two appeals, one by the manufacturer, and one by the Commissioner, against the order of the Commissioner (Appeals).

2. Amitron Ltd. filed a classification list on 19.11.1990 in which it claimed inter alia classification of copper tubes as parts of machinery under heading 8485.90 of the tariff. By notice issued on 25.4.1991, the classification of these goods was proposed under heading 8415.00 denying the benefit of notification 166/86. Adjudicating on this notice, the Assistant Collector, by his order dated 27.8.1991 held the product to be copper components classifiable under heading 7411.10 of the tariff. The Collector (Appeals) by his order dated 13.2.1990 dismissed the appeal filed by the manufacturer against this order, confirming the classification determined by the Assistant Collector.

Neither side has appealed this order.

3. It appears that despite the classification ordered by the Assistant Collector, the manufacturer continued to pay duty at the rate applicable to heading 7411.10. A

notice was issued to it on 5.3.1992, demanding the at the difference between the duty that was paid and that which was payable in accordance with the order of the Assistant Collector. The Assistant Collector adjudicated this notice and, by his order of 29.10.1992 confirmed the demand for duty. The manufacturer appealed this order, claiming classification under heading 8485.90. The Commissioner (Appeals) ruled that, since the classification of the goods had been determined under heading 7411.10 earlier by his predecessor, that order has acquired finality and the goods must be classified under that heading. This is the order that is appealed by both sides.

4. The department's appeal is on the ground that the classification ordered by the Collector (Appeals) in his order of 13.2.1992 related to another classification list, and that would not apply to a subsequent classification. We are unable to accept this contention. Irrespective of the period, once classification of a commodity has been finalised by an order that has been appealed, it has acquired finality. There is no change of circumstances or the emergence of fresh facts, which justifies the alteration of the earlier classification.

5. It is the contention of the counsel for the assessee that the classification of the product under heading 7411.10 was finalised only by the order dated 13.2.1992 of the Collector (Appeal) and that the assessments were provisional till then. Therefore, the notice was ab initio valid.

6. We are unable to accept the contention. As we have narrated above, the classification of the goods was finalised by the order of the Assistant Collector dated 27.8.1991. By this order, the Assistant Collector has clearly held the goods to be classifiable under heading 7411.10. This is the classification referred to in Rule 173C. Merely because an appeal was filed before the Commissioner (Appeals), it cannot be said that the classification was provisional and the provisions of Section 9B of the Act relating to provisional assessment would apply. One has to distinguish between the result of an appeal that has been filed and the classification being provisional. The observations of the Supreme Court in *Samrat International vs. CCE 1992 (58) ELT 561*, that duty paid by an assessee under the classification filed by it up to the date of finalisation is duty provisionally paid, will

not help the manufacturer's case. The Court said, any duty paid by a manufacturer prior to approval of the classification list would be provisional, and subject to the result of the final approval by the officer concerned. The officer concerned is the Assistant Collector; and the duty paid after he approved the classification list is no longer provisional.

7. The further contention of the counsel for the appellant that in any event duty paid for some of the period is higher than what is claimed could not be substantiated by him. There is no explanation as to how this happened, and no evidence is produced in support.

8. It is contended that the duty confirmed by the Assistant Collector has been paid on 5.9.1998 after the Commissioner (Appeals)' order was passed and that accordingly, the goods, which were detained by the authorities for non-payment of the amount, should be returned. The counsel for the appellant admits that the fact of payment of duty had not been brought to the notice of the Assistant Collector. We would like the Assistant Commissioner to take note of this submission and take appropriate action.

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