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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-14-2001

Reported in : (2002)(139)ELT586Tri(Mum.)bai

Appellant : Uni Deritend Ltd.

Respondent : Commissioner of Customs, Nhava

Judgement :

1. The appellants filed a Shipping Bill prescribing the goods as "Ferrous Investment & Precision castings - Rough Unmachined Castings of Hunting Tool". On examination of the goods, they were found to be parts of fire arms. On a reference made, the Dy. General Manager, Ordanance Factory, Ambarnath observed as below:- "The sample received vide your letter under reference has been examined. It is found that it is a ferrous casting in rought unmachined condition. Hence it can be concluded that the said item has attained the essential character of the component/part, Regarding the classification of the item, under any of the category of the arms, we are not in a position to comment." 2. Show cause notice was issued alleging that the goods tendered for export had attained the essential character of parts of shotgun. It was alleged that when the manufacturer imports or exports fire arms, parts thereof, licence under Sections 10 & 11 of the Arms Act 1959 was required. In absence of such licence, the subject parts of fire arms could not be exported. Provisions of Notification No. 40/70 Cus were also cited whereunder exports of arms without a licence was prohibited.

Citing Interpretative Rule 2A it was alleged that the subject parts had acquired the essential character of parts of Fire Arms. Therefore in the absence of the appropriate document, the subject goods attracted provisions of Section 113(d) of the Customs act, 1962 and also the provisions of Section 114 of the Act. After hearing the exporters, the Commissioner passed the impugned order. Referring to the Arms Act he held that the term 'Fire Arm' included parts thereof. For such parts, the manufacturers/exporters should hold a licence under the Arms Act.

Using the rules of interpretation he held that the subject goods were classifiable as parts of fire arms. He confiscated the goods but permitted their redemption for home consumption on payment of a fine.

He imposed a penalty on the exporters. Hence, the present appeal.

3. I have heard Shri Sreedharan, advocate for the appellants and Shri Pardeshi, DR assisted by Shri G.S. Gaud, Expert Appraiser for the Revenue.

4. Considerable case laws exist on the classification of casting and the character conferred upon certain goods in terms of the Rule 2a of the rules of Interpretation of the Tariff. Castings are manufactured with a certain purpose in mind. A number of parts of machinery and equipments first emerges as castings. The castings are then machined and subjected to other operations of the extent that they became fit to take their part in the smooth running of a machine. The Customs and Central Excise Authorities on the basis of this deeming definition, in a number of cases had sought to classify basic castings under Chapter, 84, 85, 87, or 89 of the Central Excise Tariff and or the Customs Tariff depending upon their ultimate destination. In these situations, the assessees or importers had continued to maintain that such castings fell under the parent Chapter of the respective Tariffs. In this situation, very substantial case law developed. One important judgment is that of the Tribunal in the case of Shivaji Works Ltd. v. CC, Aurangabad (1994 (69) ELT 674). In this judgment, the Tribunal dealt with the dispute between the assessee and the Central Excise Department as to the identity of such castings in the face of the Interpretative Rules. The Tribunal examined the various systems of castings. The Tribunal noted with approval the distinction made by the Asstt.

Collector to the effect that castings up to the stage of proof-machining are the raw castings which require removal of excess metal to become an essential part in a machine. The tribunal took note of the further processes such as turning, drilling, boring, sport-facing, chamfering, broaching, tapping etc. The tribunal noted with approval their earlier judgment in the case of TELCO (1990 (50) ELT 571) and observed that the subject article must lose the character of castings and travel beyond that stage to qualify for the phrase "machine parts". The degree of machining required to achieve the destination was the factor material in determining the classification.

Even where the subsequent machining was done by the customer, this part remained material. Examining the provisions of Interpretative Rules, the Tribunal observed that up to the stage of proof-machining, the cast part would remain as a casting. The Tribunal cautioned against the universal use of the concept of the essential character. The tribunal observed that a part would normally be one which is ready for use in a particular machine and the application of Interpretative Rule should not lead to a conclusion otherwise. The ratio of this judgment is followed widely and also has formed the basis of a circular issued by the CBEC (Circular No. 225/59/96 CX dtd. 1.7.96). In this circular instructions have been issued on acceptance of the Tribunal's decision in the case of Shivaji Works cited supra. Para 3 of the said Circular reads as follows:- "It would thus appear that castings coming out of the castings moulds upto the stage of proof machining and requiring further machining before being used as machine parts would be appropriately classifiable under Chapter 73. However, those castings which do not require any machining after their emergence from casting moulds viz.

precision castings and/or are, as such, ready to be used as machine parts would be regarded as articles having essential character of machine parts and would be classified under Chapters 84, 85, 86, 87 etc." 5. The fate of the contested goods would have to be determined in pursuance of the cited judgment and the cited circular of the Board.

The Bench had difficulty in determining the technical characters and therefore, at the instruction of the Bench, the Departmental Representative secured the

assistance of Shri G.A. Gaud, at present working as Appraising Officer (Machinery expert) in the new Custom House, Mumbai.

6. I have considered the submissions and perused the relevant documents. On behalf of Revenue, it was submitted that the contested goods are described as investment castings by the exporters in their shipping bill. A reference was made to paragraph 9.3 of the judgment in the case of Shivaji Works Ltd. (supra). In this paragraph, the Tribunal made the observation that investment castings are so perfect or near perfect that further machining is not required. On behalf of the appellants, it was claimed that the contents of paragraph 9.3 should not be read in isolation but read together with the earlier paragraph and the alter paragraph. I have perused the entire judgment. I have also seen the contested goods, a sample of which was presented before me. The two pieces that is the export product and the product later processed by the buyer were placed before the Export Appraiser. His observations are as under:- "The goods imported were casting produced by investment castings method and they are rough and unfinished. The sample placed before me is fully machined one wherein it was subjected to machining on a drilling machine. For face milling, bottom face milling, step milling, gap milling, slot milling it is further subjected to profile milling on one surface. The machine component is also subjected to the slot milling on one surface. The sample shown to me is fully machined and it is not subjected to any heat treatment process. Before fitment to the end product, in this case it is mandatory to subject it to the heat treatment for providing the hardened surface to smooth running. Only on subjecting the machine to heat treatment, it is capable of put to use." 7. The Tribunal were given to understand that the investment castings generally did not require further machining. That is, however, not an observation which would take away the ratio of judgment. In the case of the contested goods, in terms of the appraisal of the expert, very considerable progress and processing was required to convert the subject goods from metal castings to a part capable of being used in a shotgun.

8. Initially, the show cause notice was issued equating the product on the strength of the Interpretative note to the product viz. part as defined in Section 2 of the Arms Act. It is on this ground that it was held that in the absence of a licence, the

goods could not be exported.

When the product is examined in the light of the Shivaji Works judgment, it has to be held that the cast articles presented for export had not achieved the essential character of a part a fire arm.

9. When this is so held, there does not remain any requirement of licencing under the Arms Act. Consequently, the goods do not become prohibited goods under Section 33 of the Act and would not require any licence for their export. In these circumstances, the appeal is allowed with consequential relief.

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