Collector of C.E. Vs. Talbros Automotive Components

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-12-1986

Reported in : (1989)(43)ELT541TriDel

Appellant : Collector of C.E.

Respondent : Talbros Automotive Components

Judgement :

1. The respondents M/s. Talbros Automotive Components Ltd. manufacture, amongst other things, industrial gaskets (non-automotive) in which mineral fibre predominates in weight. Under order dated 21-11-1980 the Assistant Collector of Central Excise, Madras-II Division classified these gaskets under T.I. 22-F (4) CET and confirmed demand for duty on that basis for the period 19-12-1979 to 18-6-1980. Appellate Collector of Central Excise, Madras set aside this order under his order dated 11-5-1981. The Central Government issued notice dated 3-5-1982 under Section 36(2) of the Central Excises and Salt Act as they were of the view that the order of the Appellate Collector was not proper, legal and correct. Under the said notice they proposed to set aside the order of the Appellate Collector and pass such orders as may be deemed fit thereafter. The respondents replied supporting the order of the Appellate Collector. The proceedings initiated under the said review notice are now before us, on transfer, as a deemed appeal.

2. We have heard Smt. D. Saxena for the Department and Shri D.N. Gaur, Consultant for the respondents.

3. The contention of Smt. Saxena is that though duty may have been paid on the sheets out of which the gaskets are cut by the respondents the gaskets so manufactured are a different excisable commodity as they have a different commercial identity and are traded as such. She, therefore, contended that though duty may have been paid on the sheets under Item 22-F(4) CET duty was again payable under the same item on the gaskets and there will be no case of double taxation. Shri Gaur on the other hand contended that the respondents do not dispute classification under T.I. 68 CET [as was the case of the Department itself before show cause notice dated 18-6-1980 was issued for classification under T.I. 22-F(4) CET]. We find that this issue is squarely covered by the decision of this Tribunal in a similar case of another manufacturer Collector of C. Ex. v. IGP Engineers [reported in 1986 (25) ELT 451]. After discussing contentions raised for the Department and for the assessee in that case, the contentions being the same as are now raised before us, the Tribunal has held that the goods (Gaskets) were properly classifiable under T.I. 68 CET. Following the said decision we hold that in the present instance also the goods were classifiable under T.I. 68 CET and the order of the Asst. Collr. for classification under T.I. 22 F(4) CET was properly set aside by the Appellate Tribunal.

4. In any event we further hold that as far as that part of the order which dealt with the quantified duty demand the review show cause notice dated 3-5-1982 was barred by time since the proposal thereunder was to set aside the order in appeal dated 11-5-1981 and hence the notice was beyond the period of 6 months mentioned in Section 11-A of the Central Excises and Salt Act, which would be the period available for issue of the review notice in terms of the third proviso to Section 36(2) of the Central Excises and Salt Act. Therefore even without reference to discussions on the question of classification, the review show cause notice will, in any event, have to be discharged at least with reference to this portion on the basis of limitation.

5. In view of the above discussions we dismiss the appeal and discharge the show cause notice dated 3-5-1982.