

Jay Engineering Works Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Hyderabad

Decided On : Jun-28-2002

Reported in : (2002)(104)LC1002Tri(Chennai)

Judge : G B Deva, S T S.S.

Appellant : Jay Engineering Works Ltd.

Respondent : Cce

Judgement :

1. The appellants manufacture Elements, Delivery Valves, Single Cylinder Pumps, Nozzles and Injectors. These parts are used in diesel oil operated Internal Combustion Engines. The appellants produce Nozzle Holder Forgings, a part of Injector. They have been declared in the Classification List, as required of them, under Section 173B of the Central Excise Rules, 1944 which had been approved. When the new Tariff Act came into being from 1.3.1996 (sic), the appellants were asked to file a fresh Classification List which was filed claiming benefit under Notfn. No. 75/86 dtd. 10.2.1986 and also mentioning that they manufacture Motor Vehicles diesel parts. They mentioned the nozzles and Nozzle holders and claimed exemption. The lists were approved by the authorities. The appellants were clearing the nozzles and nozzle holders used in internal combustion engines falling under Chapter 84 as per these approved lists, without payment of duty. By Notfn. No. 312/86 dtd. 20.5.1986, some amendments were brought forth in respect of Item Nos. 1, 2, 10, 13 and 14 of the Table to Notfn. No. 75/86 dtd.

10.2.1986. There were no changes in Item No. 5 to the Table and the expression "Nozzles and Nozzle Holders" remained so even after amendment Notfn. 312/86 dtd. 20.5.1986. The Central Board of Excise and Customs by its Telex F. No. 156/84/86-CE.4 dtd. 3.9.1986 informed the Collectors, inter alia, that the benefit of exemption under Notfn. No.75/86-CE dtd. 10.2.1986 applies to parts and accessories of motor vehicles, tractors and trailers only. It was also informed that "component parts of diesel oil operation I.C. Engines while do not come in the category of parts and accessories of motor vehicles, tractors and trailers and which have been specifically excluded from the purview of Notfn. No. 217/85-CE dtd. 8.10.1985 by amending Notfn. No. 79/86-CE dtd. 10.2.1986 may not repeat not to be eligible for exemption under other Notfn. No. 75/86-CE dtd. 10.2.1986". In the telex, it was directed "urgent action to recover duty should be taken." On the basis of this direction, three Show Cause Notices were issued by the authorities demanding duty on Nozzles. It was also alleged that the appellants were manufacturing Nozzle Holders and under this presumption, three more (other) show cause notices were issued by the authorities. Though in fact, Nozzle Holder was never manufactured/produced by the appellants and only nozzle holder forgings emerged and they were not the same as "Nozzle Holders" the authorities alleged that these were Nozzle Holders. The Collector adjudicated the notices, confirming the demand and also levied a penalty of Rs. 3,00,000/-. The appeal is against this order.

a) The Special Bench (BI) of the CEGAT, New Delhi vide its decision in Final Order No. E/399 and 400/91-B1 dtd. 16.11.1994 in Appeal Nos. E/5530 & 5647/91-b1 1995 (74) ELT 65 (Trib) have held that in view of the majority opinion, parts of nozzle and nozzle holders are entitled to the benefit of Notification 217/85 (as amended) subject to fulfilment of the conditions provided therein. In this view of the matter and following the same, we find no merits in the Commissioner's impugned order denying the appellants the benefit of Notfn. 217/85 dtd. 8.10.1985 as amended & Notfn. No. 75/86 as granted by the proper officer by the approval of the classification list; since in this case the impugned goods have been cleared for use in diesel 1C engines.

3. Following the settled law, we set aside the order and allow the appeal.

