Sunbeam Castings Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-11-2002

Reported in : (2003)(85)ECC77

Judge : S Kang, a T V.K.

Appellant : Sunbeam Castings

Respondent : Cce

Judgement :

1. Appellants filed this appeal against the adjudication order passed by the Commissioner of Central Excise.

2. Appellants are engaged in the manufacture of cylinder heads and cylinder blocks of motor vehicles. Appellants are claiming classification of the goods, in question, under heading 8409.00 of Central Excise Tariff. Show cause notice was issued to the appellants on 18.2.2000 for the period 1.3.97 to 28.2.99 demanding duty on the ground that the goods, in question, are classifiable under heading 7616.90 of Central Excise Tariff. It was also alleged that the appellants intentionally mis-declared the goods to evade payment of duty. The adjudicating authority confirmed the classification of the goods, in question, as proposed in the show cause notice and confirmed the demand and imposed the penalty.

3. The contention of the appellants is that the whole of demand is time-barred and no suppression can be alleged against the appellants.

Their contention is also that earlier to the present proceedings, a show cause notice was issued to the appellants on 4.5.94 wherein it was proposed that the goods, in question, are classifiable under heading 8409.00 of the Central Excise Tariff as parts of engine and the Commissioner of Central Excise, vide adjudication Order No. 146/94 dt.

15.9.94, held that the goods, in question, are classifiable under heading 8409.00 of Central Excise Tariff and confirmed the demand. The appellants complied with the adjudication order and started classifying the goods, in question, under heading 84.09 of Central Excise Tariff and their classification was duly approved by the revenue authorities.

Now in the present show cause notice, the revenue want to re-classify the goods, in question, under tariff heading 7616.90 of Central Excise Tariff. The contention of the appellants is that, presently, there is no difference in rate of duty under both the headings as claimed by the appellants and as held by the revenue authorities, therefore, they are arguing their case on limitation only. As they were classifying the goods, in question, as per earlier adjudication order passed by the Commissioner of Central Excise, no allegation or suppression or mis-declaration to evade payment of duty, can be alleged against the appellants.

4. Ld. DR, appearing on behalf of the revenue, submitted that the goods are classifiable under chapter 76 of the Central Excise Tariff and the appellants are wrongly declaring the same as parts of engine and ho reiterates the findings of the lower authorities.

5. In this case, show cause notice was issued on 18.2.2000 for the period from 1.3.97 to 28.2.99.

6. We find that earlier to the present proceedings, a show cause notice was issued on 4.5,94 by the revenue authorities with the proposal to re-classify the goods under chapter heading 8409.00 from chapter heading 8714.0 as claimed by the appellants. Show cause notice was adjudicated by the Commissioner of Central Excise and vide Order-in-Original No. 146/94 dated 15.9.94, the Commissioner held that the goods, in question, are classifiable under heading 8409.00 of Central

Excise Tariff and confirmed the demand. After passing of this order, the appellants started filing of the classification list claiming the classification of the goods as per order of the Commissioner of Central Excise.

7. In view of the order passed by the Commissioner classifying the goods under heading 8409.00, no suppression or misdeclaration can be alleged against the appellants. Therefore, the demand is time-barred, hence, not sustainable. The impugned order is set aside and the appeal is allowed.