Collector of C. Ex. Vs. Metallizing and Engineering

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-15-1986

Reported in : (1989)(43)ELT752TriDel

Appellant : Collector of C. Ex.

Respondent : Metallizing and Engineering

Judgement :

1. M/s. Metallizing & Engineering Works manufacture what they describe as metallizing wires. Under notice dated 21-7- 1979 the Assistant Collector directed them to show cause why these goods should not be classified as welding electrodes falling under Tariff Item 50 of the First Schedule to the Central Excises and Salt Act and why duty should not be demanded from them on that basis in respect of their manufacture and clearances for the years 1973-74 to 1976- 77. The Company replied denying that the said goods fell under Tariff Item 50 CET. On adjudication the Assistant Collector, under order dated 19-9-1979, rejected the case of the Company and directed the Company to take out a licence and submit classification list. He authorised raising of necessary demands of duty and imposed a penalty of Rs. 50/-. On appeal the said order was set aside by the Appellate Collector of Central Excise, Calcutta under order dated 18-8-1980. Subsequently the Central Government issued notice on 12-11-1981 under Section 36(2) of the Central Excises and Salt Act (as it then stood) since they were of the view that the order of the Appellate Collector was not legal, proper and correct. It is the proceedings so initiated that are now before us, on transfer, as this deemed

appeal.

2. We have heard Smt. Saxena for the Department and Shri Gopal Prasad, Consultant for the respondent Company.

3. The product in question is called metallizing wire by the respondent. From the order of the Assistant Collector it appears that wire rods received by the respondents undergo further manufacturing process in their factory in reduction of the diameter of the wire and that in some cases copper coating is given to the wires so manufactured. The uncoated wire rods are sent to M/s. Eutectic Welding Alloys of India Ltd., Bombay who use these wires as rawmaterial for production of electrodes. The coated wire rods are sent to M/s. Shankey Wheels Ltd., Durgapur and railway workshops who utilise these coated wires for metallizing. The process of metallizing is described by the Assistant Collector in the following words : "The process is that the wire rods are fired through a firing gun by which metal spraying is done. The metal contents of the wire rods on firing through the guns come out in the shape of spraying flame which fills up the pit falls in the surface of wheels or other metals." The Appellate Collector decided on the basis that these wires are cleared in the form of coils and since flux coating will come off the wire when it is coiled, the wires would not be electrodes. In seeking to review this order the notice of the Government proceeded on the following basis: "On examination of the case records, the Central Govt. is tentatively of the view that the order of the Appellate Collector of Central Excise, Calcutta, is not proper, legal and correct. It is found that the product manufactured corresponds in respect of its chemical composition, nature of coating etc. to those of a type of welding electrode finding specific application in gas metal arc welding of steel and for such sp'ecific application the product might find use welding electrodes. Further uncoated wires as manufactured by the manufacturers have found customary application in submerged arc welding of steel and such coated wires are used as welding electrode in such welding process." Thus the show cause notice proceeded on the basis that the metal wires manufactured and cleared by the respondents find use as welding electrodes in submerged Arc Welding and would therefore qualify for classification under T.I.50 CET since the said entry read "Welding Electrodes, all sorts". We find that this approach of the Central Government was not justified.

Apart from the fact that no evidence has been furnished of the use of such wires in submerged Arc Welding, it may be noted that even if such use is established that would not suffice for classifying the product under T.I. 50 CET. In this connection, we may refer to the judgment of the Bombay High Court in Advani Oerlikon Ltd. and Anr. v. Union of India and Ors.s (1981 ELT 432 Bom.). The product in question in that case was also Copper Coated Mild Steel Wire. The department wanted to classify the same under T.I. 50 CET, on the basis that they were used in submerged arc welding. In dealing with this contention the Bombay High Court observed as follows: "It is difficult to see how gas welding wire can be equated with welding electrodes which by their very nomenclature connote the use of electricity. Mr. Mehta's intepretation is also rendered nugatory by reason of the fact that if it had been intended to include gas welding within electrical welding, namely, by electrodes, the entry would have read, for instance, "welding materials" instead of the description specifically being confined to electrodes (be they of all sorts) envisaging welding with the use of electricity." The said observations would equally apply to the present case also since even with reference to the metallizing wire manufactured by the respondents the use thereof, as noted by the Asstt. Collector himself in his order (in the passage extracted supra) is to fire that wire through a gun, the wire getting melted on emerging through the nozzle and thereupon being sprayed on the object to be coated. In this process also no electricity passes through the wire and the melting is not by use of electricity but by use of flames produced by gases used in the firing gun. The Tribunal itself, following the Bombay High Court judgment supra, held in Poonam Trading Co., Calcutta v. Collector of Central Excise, Calcutta (1983 ELT 2455), that submerged arc welding wires are not classifiable as Electrode wires under T.I. 50 CET. No doubt it was mentioned by the D.R. that the decision of the Bombay High Court has been stayed on appeal. But that would not mean that the ratio of that decision could not be followed in other cases until that decision is upset on appeal. In view of the said decisions (which we respectfully follow) we hold that the order of the Appellate Collector setting aside the classification under T.1.50 CET requires no interference.

4. In this view the other contentions, such as bar of limitation in issuing the notice under Section 36, are not necessary to be considered.

5. The appeal is, therefore, dismissed and the notice dated 12-11-1981 is discharged.