

Sara Services and Engineers Pvt. Vs. Commr. of Cus. (icd)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-31-2002

Reported in : (2002)LC6690Tri(Delhi)

Judge : S Kang, a T V.K.

Appellant : Sara Services and Engineers Pvt.

Respondent : Commr. of Cus. (icd)

Judgement :

1. The issue involved in this appeal, filed by M/s. Sara Services & Engineers Pvt. Ltd. is whether 'Hammer Union' and Swivel Joint are covered by Group Code 61/71(ii) of the Schedule to D.E.P.B.2. Shri A.R. Madhav Rao, learned Advocate submitted that the appellants are, inter alia, engaged in export of forged non-alloy steel (machined) Swivel Joints and Hammer Unions; that they have been enjoying benefit of 22% DEPB by classifying the impugned goods under DEPB Entry No.71(ii) of the Engineering Group; that the Commissioner (Customs), under the impugned order, has denied the DEPB benefit on the ground that the impugned goods are distinct products in ready to use condition and drilling or reduction of height as per requirement by machining do not take away the basic character of the goods as identifiable finished products. The learned Advocate, further, submitted that the impugned goods are machined components at the time of export; that further manufacturing activities like machining to reduce size/drilling holes etc. are undertaken at the Customers' end to make them usable in finished ready to use condition; that till such time, the impugned goods could not be used

as components for fitment to the oil rig and were not fully finished equipments. He relied upon the decision of the Tribunal in the case of Shivaji Works Ltd. v. C.C.E., Pune, 1995 (78) E.L.T. 519 (T) wherein it has been held that "A casting or cast article is one which is manufactured by a particular method, casting. While it may be known depending upon its use and application by another name, it does not cease to be a casting or cast article. A crankshaft, for example which is made by forging is in that sense a forged article. It is also clearly recognizable part of machinery for transmission of power". He also mentioned that the said decision has been affirmed by the Supreme Court as reported in 1996 (87) E.L.T. A131 (S.C.). He further mentioned that the Tribunal has followed the decision in Shivaji Works case in NECO Casting Ltd. v. C.C.E., Nagpur, 2002 (150) E.L.T. 117 (T) - Final Order No. 234/2002-B, dated 27-5-2002. He emphasised that the impugned goods are forgings (Machined) requiring further machining are covered by the entry 71(ii) of DEPB Rate list as these are not ready to use equipments but forged (machine) components.

3. Countering the arguments, Shri Jagdish Singh, learned DR, submitted that the impugned goods were not forging but were identifiable parts of the machinery; that this is also evident from the relevant invoices in which these have been described as "Hammer Union" and "Swivel Joint" and not as forgings; that drilling of holes is made for fitment purposes and reduction of heights may be required at the end of buyer; that these process are carried out on identifiable machine parts. He relied upon the decision in the case of Aravali Forgings Ltd. v.C.C.E., Jaipur, 1994 (70) E.L.T. 693 (T) - Finally he reiterated the findings as contained in the impugned Order wherein it has been mentioned that, to cover such cases, serial No. 589 was introduced in the DEPB Schedule by Public Notice No. 52(RE-99)/97-2002, dated 1-3-2000 which cover identifiable ready to use machine parts/components made wholly or pre-dominantly of alloy steel/stainless steel manufactured through forging process.

4. In reply the learned Advocate mentioned that 71(ii) is a generic entry covering Alloy Steel/stainless steel forging (machined); that subsequently introduced entry 589 is a specific entry; that as such at the material time the products in question were covered by generic entry No. 71(ii). He also emphasised that the Revenue

has also not disputed the fact of machining and as entry covers machined forging, the Appellants are eligible to get the benefit of DEPB scheme.

5. We have considered the submissions of both the sides, Product Code 61, Entry No. 71(ii) prescribes rate for "Alloy Steel/Stainless Steel Forgings (machined)".

It is apparent from the perusal of the said entry that this is applicable to forgings (machined). The Revenue's contention is that the impugned goods have been manufactured out of forgings and they have ceased to be forging and new precision equipments ready to use have been manufactured. The Appellants on the other hand, have contended that the impugned goods are forgings (machined) which require further processing by the Customers and as such are covered by the DEPB Rate list entry No. 71(ii). The Commissioner of Customs, in the impugned Order, has given his specific findings that the impugned goods "hammer union" and "Swival Joint" are distinct trade nomenclatures of identifiable products in ready to use condition. The Commissioner has also given his findings that the drilling of holes or reduction of height as per customers requirement does not change the basic character of these goods as identifiable finished products in ready to use condition. We find no infirmity in these findings. Both the impugned goods have remained no more forgings (machined) but have become identifiable parts which have been described as "hammer union" and "Swival Joint." The Appellate Tribunal considered a similar question in the case of Shivaji Works Ltd. v. CCE, 1992 (69) E.L.T. 674 (T) wherein it has been held that "Castings are commodities/articles recognized as separate articles in the trade as also in the First Schedule to CETA, 1985 and are different from parts falling under Chapters 84, 85 and 87 Before an article must be considered to have the essential character of the parts, it must, at least, lose the Character of 'castings' and must go beyond the stage of castings". The ratio of the decision in the case of second Shivaji Works Ltd. - 1995 (78) E.L.T.519 is not applicable as in the said matter, the Tribunal was considering the availability of exemption Notification No. 223/88-CE., dated 23-6-1988 and Tribunal observed that same words - castings and cast articles of iron and steel - were repeated in Serial Nos. 1 and 3 of the Notification and it was not the case of Department that goods had undergone any processing other than mentioned in the proviso to the Notification. In the case of Neco

Castings Ltd. also, the benefit of Notification No. 223/88-CE. was under consideration which exempted castings and cast article provided that they had not been subjected to any machining or surface treatments other than mentioned in the Notification and the Tribunal, in absence of any evidence that the Appellants therein undertook any process other than mentioned in the Notification allowed the benefit of the Notification to the Appellants.

No such Notification is under consideration in the present matter. We therefore, reject the appeal.

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