

Packam and Co. and anr. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-09-1987

Reported in : (1987)(12)LC193Tri(Delhi)

Appellant : Packam and Co. and anr.

Respondent : Collector of Central Excise

Judgement :

1. This is a case of a Special Bench appeal where the two learned members constituting the Bench differed on one point. The point of difference, as formulated by them, was as follows :- "Both of us agree that the order of the lower authorities should be set aside. There is no difference on the substantial disposal of the appeal. A point of difference is 'whether after setting aside the orders of the Appellate Collector and Assistant Collector, an order dismissing the appeal could also be passed'." 2. Copies of the separate orders of the two learned members and of the point of difference as formulated by them were forwarded to the two appellants and to the respondent, and they were informed that the hearing on the point of difference before the President would take place on 21.1.1987. Both the appellants acknowledged receipt of the hearing notice, but requested that the hearing might be fixed on 9.2.1987, that is today, when other appeals filed by them were coming up before the Tribunal. Their request was agreed to, and the matters were taken up today. Shri N.R. Patel, Director of Messrs. Extrusion Process Pvt. Ltd., was present on behalf of his firm. No one appeared on behalf of Messrs. Packam & Co.. Shri Patel confirmed that they were aware of the hearing but had

not considered it necessary to arrange for separate representation, since all relevant arguments would be put forward by him on behalf of Messrs. Extrusion Process Pvt. Ltd. Shri H.L. Verma, SDR, was present for the respondent Collector.

3. At the outset, it was pointed out from the Bench that the present hearing was not in the nature of an appeal against the conclusions of the two learned members on matters on which they were in agreement. The Bench would be concerned only with the specific point of difference.

4. Shri Patel stated that he was aware of this position, and that his submissions would be very brief. Both members were agreed in setting aside the orders of the two lower authorities. Accordingly it could not be said that the appeals were being dismissed. He supported the view of the learned judicial member.

5. In reply to a question from the Bench, Shri Patel stated that his firm had actually started manufacture of the goods in question. They had also filed a classification list under protest, in compliance with the order of the Assistant Collector on the pre-manufacture enquiry made by him. They had not separately appealed against the approval of the classification list, since they had already appealed against the Assistant Collector's order on the pre-manufacture enquiry, which has given rise to the present proceedings.

6. For the respondent Collector, Shri Verma supported the view of the learned technical member and submitted that the appeals should be dismissed. He submitted that if the appeals were allowed, an anomalous position would arise. According to him, this would mean that the contentions of the appellants in regard to the excisability/classification of their goods would be deemed to have been accepted.

7. In reply, Shri Patel referred to para 3 of the learned technical member's order in which he had observed that "because an article is punched, drilled, flanged, it does not become assessable under item 68". He had nothing further to add.

8. I have carefully considered the orders of the two learned members and the arguments submitted before me at the hearing. As stated by the two learned

members in setting out the point of difference, there is no difference between them on the substantial disposal of the appeals. The only point of difference is whether the order should also say that the appeals have been dismissed.

9. I do not agree with the argument of the learned SDR that unless the appeals are rejected, the contentions of the appellants regarding excisability/classification of their goods would be deemed to have been accepted. The substantive part of the order, on which both learned members are agreed, makes it clear that the orders of the Appellate Collector and the Assistant Collector would be set aside. In other words, there would be no decision by either of these authorities, and the enquiry addressed by the appellants to the Assistant Collector would have to be taken as still pending. Nor would there be any anomaly resulting from the order. There would be more of an anomaly if on the one hand the orders of the lower authorities are set aside, as a result of consideration flowing from the appeals filed by the two appellants, and at the same time it is ordered that their appeals are dismissed.

10. As pointed out by the learned judicial member, Section 35C(1) of the Central Excises and Salt Act refers to the nature of the orders which may be passed by the Tribunal on an appeal. The decision may be one confirming or modifying or annulling the decision or order appealed against or referring it back to the authority which passed the order, with directions for a fresh decision. No doubt the Tribunal is empowered to pass "such orders thereon as it thinks fit", but the types of orders referred to are comprehensive and it is difficult to think of any other type of order which may be called for on an appeal. It is not, however, necessary to dilate on this, because in the present case the mere fact of setting aside the orders of the lower authorities, whether or not it results in any relief to the appellants, would amount to partially allowing their appeals. It will be seen that in their appeals to the Appellate Collector the appellants had inter alia argued that the Assistant Collector's decision was erroneous, void and not tenable in law, and that it was without or in excess of jurisdiction.

In their revision applications, they reiterated the submissions made by them in their appeals to the Appellate Collector, and further submitted that the orders of the Appellate Collector were without or in excess of jurisdiction; erroneous, bad in

law; and not tenable in law. By holding that the Assistant Collector should assess goods presented before him for decision, and not goods which would be manufactured and cleared in the future, the two learned members of the original Bench were in effect accepting that the Assistant Collector's orders were not tenable in law, etc; so also that the orders of the Appellate Collector were not tenable in law. As clearly pointed out by the learned technical member, this would not mean that the contentions of the appellants on the merits of excisability or classification were accepted: he had clearly pointed out that "the slate is now wiped clean, the two parties may begin proceedings on definitive goods on which their perceptions differ". This is the substantive part of the order, with which the learned judicial member had also agreed. A fair description of the decision would therefore be that the appeals had been partially allowed.

11. In the light of the above discussion, it appears to me that the operative part of the orders of the original Bench could have been worded somewhat as follows (the precise wording is of course a matter for that Bench): - "We accordingly set aside the orders of the Appellate Collector and the Assistant Collector. The slate is now wiped clean, the two parties may begin proceedings on definitive goods on which their perceptions differ. The two appeals stand allowed to the above extent only".

12. The records should now go back to the members of the original Bench for passing final orders on the appeals in accordance with the above decisions on the point of difference.

13. In accordance with the opinion expressed by the Hon'ble President, the appeal is disposed of as follows :- "We accordingly set aside the orders of the Appellate Collector and the Assistant Collector. The slate is now wiped clean, both the parties may begin proceedings on definitive goods on which their perceptions differ. The two appeals stand allowed to the above extent only".

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