

Power Build Ltd. Vs. Collector of C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-02-1987

Reported in : (1989)(42)ELT129TriDel

Appellant : Power Build Ltd.

Respondent : Collector of C.E.

Judgement :

1. This appeal has been filed by the appellants, before this Tribunal, against the order of the Collector of Central Excise, Bombay, dated 10-11-1982. Since the impugned order was with reference to the two Orders-in-Original, a single appeal was filed according to the practice then prevailing with the Board. On being pointed out that two appeals have to be filed. A supplementary appeal No. 412/87-B-I has been filed with an application for condonation of delay. Having regard to the circumstances of the case, the delay is condoned.

2. The appellants manufacture (i) Weighbridges, and (ii) Electronic Control Panels which are component parts of Beltweigher. They also manufacture (i) Conveyor; (ii) Electronic Control Panels; (iii) Weighbridge which are components parts of Weigh Feeder. A complete Belt Weigher or a Weigh Feeder consists of the following parts: (i) Weigh Bridge (i) Weigh Bridge (ii) Control Panel (ii) Main Control Panel (iii) Belt (iii) Local Control Panel & Controllers (iv) Conveyor.

(iv) Belt Feeder (v) Belt (bought out item) The appellants were manufacturing only parts of the two machines. But by mistake, they had described as 'Beltweigher'

and 'Weigh Feeder' in their classification list. The Range Supdt, held that these items were classifiable under TI 45 as 'Weighing Machines'. He passed two orders dated 22-10-1980 and 30-3-1981 for Belt Weighers and Weigh Feeders respectively. An appeal was filed before the Collector of Central Excise (Appeals) and the appellants contended, inter alia that the parts of Belt Weigher and Weigh Feeder would not be classified under 7145. These items either individually or after the assembly could not be used for determination of weight. TI45 was not attracted. The Appellate Collector rejected the contentions of the appellants and held that the weigh bridge was a wider term including the platform scale.

Hence the present appeal.

3. Sh. N.D. Khosla, Consultant for the appellants submitted that TI 45 referred to machinery and appliances for determination on weight including parts of weigh bridges. He laid emphasis that the entry contemplated only parts of weigh bridges and that parts of belt weigher or weigh feeder could not be classified under that item. The specification of the parts of weigh bridges in the description clearly excluded parts of weighing machines other than weigh bridges. He urged that the weigh bridge required a platform and that the belt weighers and weigh feeders do not have that facility. The BTN Description of Weigh bridges as given in Chapter 84.20, S.No. 7, Page 1220, Vol. III is as follows: The Oxford English Dictionary described weigh bridges as "A platform scale flush with the roadway as for weighing vehicles, cattle or coal." Two machines concerned in this appeal were designed to determine the rate of flow of the material passing per unit of time over their so-called weigh bridge. Tariff Item 45 will not, therefore, be attracted. He stated that the Collector (Appeals), Central Excise, New Delhi in his order dated 4-10-1985 held in respect of the same party that parts of belt weighers and weigh feeders would be correctly classifiable under Item 68.

4. Sh. H.L. Verma, SDR referred to the Brochure wherein the items have been described as belt weigher. According to him, the items are themselves complete weighing machines. The classification list filed by the party also described the items as belt weighers and weigh feeders.

5. Sh. N.D. Khosla, Consultant for the appellants in his reply pointed out that no show cause notice was issued by the Supdt., before the adjudication and that the appellants have urged in their appeal that the goods are merely parts and not belt weighers or weigh feeders machinery.

6. We have carefully considered the contentions of both the parties. On a perusal of the impugned order, it is noticed that the appellants manufacture the weighing portion of belt weighers and weigh feeders and Electronic Control Panels. The electronic control cannot be considered as a weighing machine. The functions of the other parts manufactured by the appellants have not been clearly described. In their oral submissions before the Appellate Authority the appellants have stated what they cleared from the factory was not a belt weigher but only two component parts thereof. They were liable to pay duty only on the two components and not on the belt weigher as such. But from the order-in-original by the Range Supdt., we notice that he has referred to the function of an electronic belt weigher. Though the appellants urged before the Appellate Authority that they manufactured only the components, the Appellate Authority has stated that all modes of weighment are included in this Tariff Item. The authorities below appear to have been influenced by the Brochure produced by the party in regard to the belt weigher. We are not concerned with the belt weigher or weigh feeder but components parts thereof. Each of the component part has to be examined and we have to find out whether these parts would attract duty under TI 45. It was also pointed out that no show cause notice was issued to the appellants before the classification was determined. Under the circumstances, the impugned order is set aside and the matter is remanded to the Collector of Central Excise, Bombay for de novo adjudication in the light of observations contained in this order.

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