Commissioner of Central Excise Vs. Mukund Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-24-2004

Reported in : (2004)(167)ELT177Tri(Mum.)bai

Judge : A Wadhwa, S T C.

Appellant : Commissioner of Central Excise

Respondent : Mukund Ltd.

Judgement :

1. The dispute involved in the present appeal of the Revenue is as regards the classification of Knuckles and Coupler body casting.

Whereas the Commissioner (Appeals) has accepted the respondent's contention that the said castings are classifiable under sub-heading 7325.90 in the light of the Tribunal's decision in the case of Shivaji Works Ltd. v. C.C.E. Aurangabad - 1994 (69) E.L.T. 674 (Tribunal), the Revenue's contention is that the same are properly classifiable under heading 86.07 inasmuch as the same are distinctly identifiable as parts of railway or tram way locomotive or rolling stock.

2. The impugned decision of the Commissioner (Appeals) has been arrived at after taking note of the manufacturing process adopted by the respondents, which has been reproduced in the said order, in detail. He has also observed that the goods in question do not possess the essential characteristics of any goods except of casting and only proof machining has been done on the same. As such, by

following the Shivaji Works Ltd. decision, he has held that the goods in question correctly fell under heading 73.25 as casting.

3. Revenue in their memorandum of appeal has no where disputed that the decision of the Tribunal in the case of Shivaji Works Ltd. is not applicable to the facts of the instant case. They have only reiterated that in terms of Rule 2(a) of the rules of interpretation the goods are to be classified under heading 86.07 inasmuch as they had attained the recognition as "parts" of railway.

4. We find that the same argument of the applicability of Rule 2(a) was raised before the Tribunal in the case of Shivaji Works Ltd. and was considered by the Tribunal and it was held that casting upto the stage of proof machining are the raw casting requiring further machining before they are used as parts. "Casting of parts" by themselves cannot be treated as having the essential characteristic of "parts" and as such heading 73.25 would include all castings from the stage of their emergence from the casting mould to the stage of being proof machined.

We do not find any reason sufficient enough to take a different view then the one taken in the above referred decision of Shivaji Works Ltd. 5. As such, we find no merits in the Revenue's appeal. Revenue's appeal is rejected.

6. In view of Rule 2 (a) of the General Interpretative Rules (G.I.R.), any reference in a heading to parts of machine includes a reference to incomplete and unfinished machine parts provided the same have the essential characteristics of the complete or finished machine parts.

The H.S. Explanatory Notes under Heading 73.25, as quoted by the original authority in his order, also emphasizes that castings which require further working but have the essential character of a finished product would not be covered by the said heading. There can be no dispute that there are four stages in the production of a machine part:- (ii) castings which have been further worked upon but which have not obtained the essential character of a finished or complete machine part. These also have to be classified in the metal chapters.

(iii) castings which have been further worked upon and which have acquired the essential characteristics of finished or complete machine parts though these require further working. Such goods have to be classified under the machinery chapters by virtue of GIR 2(a).

(iv) castings which have been completely worked upon as finished or complete machine parts requiring classification under machinery chapters.

7. In the case at hand, the operations which the casting in question has undergone, as enumerated in the impugned order in appeal, are in the nature of necessary operations for the manufacture of the casting itself including fettling, heat treatment, shot blasting, chipping and some times proof machinery for correcting surface defects. There is no evidence brought on record to show that incomplete/unfinished machine parts have been manufactured out of these castings having essential characteristics of the complete/finished machine parts. As such, I concur with the order recorded by my learned Sister upholding the classification of the impugned goods as casting under Heading 7325.90 and rejecting the department's appeal.