

Nima Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-12-1987

Reported in : (1989)(21)LC94Tri(Delhi)

Judge : R T V.T., K P Anand

Appellant : Nima Limited

Respondent : Collector of Central Excise

Judgement :

1. The appellants M/s. Nima Limited manufacture, amongst other items, "Sliding Storage System". The same was classified under T.I. 40 CET. On appeal the said classification was confirmed by the Collector (Appeals) under his order dated 6.11.1982. This appeal is against the said order.

2. We have heard Shri A.P. Hathi, Advocate for the appellants and Shri Vineet Kumar, SDR for the Department.

3. In filing their classification list the appellants noted that the storage system is mounted on fixed rails and would not therefore be steel furniture and that the classification under T.I. 40 is being filed under protest. On this protest being rejected and the classification being approved under T.I. 40 the appellants preferred an appeal. A copy of the said appeal petition is part of the paper book.

In this appeal also the appellants had contended that classification under T.I. 40 was incorrect. But it was not made clear whether they were claiming classification

under T.I. 68 or were contending that the goods were not exciseable at all. We say so since the said appeal memo refers to the goods being immovable except to the extent of moving on fixed rails but no classification is suggested. The Collector (Appeals) confirmed the classification under T.I. 40. In the grounds of appeal before us also it is not made clear whether the appellants claimed classification under T.I. 68 CET or claimed that the goods are not exciseable at all. In his submissions before us Shri Hathi referred to the alleged immovable character of the goods but finally submitted that the proper classification would be under T.I. 68 CET. In the circumstances it would be better if the contention whether the product would not be exciseable at all, not being goods but immovable property, is disposed of in the first instance.

4. It would be better if at this stage a brief description is given of the goods. A pamphlet has also been filed. It is seen therefrom that the system consists of a series of shelves which are so fabricated that they could move forward and backward on a set of parallel rails the racks at either end being closed at the outer end. Therefore if all the racks are pushed together and locked up the contents of the racks would become inaccessible. After the lock is opened one or more of the racks could be pushed on the rails so that access could be had to the articles stored in the rack. The advantage would be while this set of racks if kept in the normal manner would occupy a large volume of space they would under the present arrangement occupy a lesser volume of space but at the same time access could be had to each individual rack by moving the same on the rails.

5. The racks as well as rails are fabricated in the factory of the appellants and then taken to the place of the customer where the rails would be embedded in the earth to make them immobile, placing the racks on the rails to enable movement of the racks forward & backward on the rails. Thus, it is not as if the storage system comes into existence by erection out of the components at site as in the case of Elevator (considered in the OTIS Elevator Co. case 1981 ELT 720 G.O. India) : 1982 ECR 328D. The article as removed from the factory of the appellants is the complete sliding storage system. Hence the contention that the product would not be goods at all is not acceptable.

6. Then the question would be whether they would be steel furniture to merit classification under T.I. 40 CET. Shri Hathi relies upon the decisions of the Govt. of India in Ajay Enterprises (P) Ltd. 1978 ELT J-144 and Modern Engg. Co. 1980 ELT 61 : 1979 Cen-Cus 589D. These cases related to the issue whether Cinema chairs are not moveable and would not be steel furniture falling under T.I. 40 CET. Shri Hathi points out that the Govt. of India had held in favour of the assessee in both the said decisions and a similar result would follow in this appeal also.

But it should be noted that two decisions of the Govt. of India were on the basis (hat the cinema chairs were one legged units which could not independently even stand up and could be used only when attached to the adjusting seat and fixed to the floor. In the present instance the racks, though they may be having wheels to move on the rails would still be useable as racks without mobility. Steel racks would undoubtedly be steel office furniture. Hence the reliance on the said two decisions is not appropriate.

7. The other decision relied on by Shri Hathi is in the case of Materials Handling Engg. Co. 1980 ELT 231. The goods involved in the said case in the Bombay High Court were Metal Tube Trolley, Mini Trolley Structure (frame), Gas Trolley, Storage Bins, Stainless Steel Pump Stands and Box with door. Shri Hathi points out that Storage Bins were held to be not steel furniture and contends that the position would be the same with reference to the goods in this appeal. But as already noted the goods in issue consist of a series of steel racks that move on rails. Steel racks and almirahs would be undoubtedly office furniture. Hence this decision would not support the case of the appellants.

8. The last decision relied on for the appellants is that of the Bombay High Court in the case of Union Sales Corporation 1977 Vol. 39 STC 452, The Bombay High Court held that the motorised elevator mobile copper roller road racks would not be furniture. It is seen from the judgment that the article was a power operated storage rack which stored, shifted and placed rolls in the printing Deptt. at the regular place the movement being backward and forward as well as upward and downward.

These movements were by use of electric motor power. The High Court observed "from a commonsense point of view it appears to us difficult to record an article of this kind containing such machinery as aforesaid, as a piece of furniture." On the other hand the article in issue before us consists of a series of storage racks which are to be manually moved backward and forward only and perform no other function except storage. We therefore hold that the ratio of the decision in the Union Sales Corporation case cannot be extended to article in issue in this appeal. Shelving racks have been held to be steel furniture by the Gujarat High Court in the Chandan Metal Products (P) Ltd. case reported in 1969 (23) STC 29.

9. Shri Hathi further relies on the letter dated 25.3.1968 of the Ministry of Finance (No. B2/2/68 CX) the extract thereof being furnished by him. He points out that the Ministry had clarified that specially designed manufactures of steel like counters, storage cabin, cat walks etc. used in the industrial establishment cannot be held to be steel furniture. His reliance thereon is to the clarification regarding storage cabins. He states that by the same reasoning the subject goods would not be furniture. We have already seen that so far as racks are concerned the Gujarat High Court has held them as steel furniture. The reference in the Ministry's letter is evidently to storage cabins erected at site and in the nature of fixed rooms for storage.

10. In view of the above discussion we hold that the lower authorities correctly classified the product in question under Tariff item No. 40 CET. This appeal is accordingly dismissed.

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