

Sharpmex Engineers Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-29-2004

Reported in : (2005)(191)ELT478Tri(Mum.)bai

Judge : T Anjaneyulu

Appellant : Sharpmex Engineers

Respondent : Commissioner of Central Excise

Judgement :

1. Heard. The issue involved is that of refund of Rs. 1,00,000/- deposited by the appellants towards redemption fine imposed on them, during the pendency of appeal before the Tribunal under protest.

2. The appellants were issued Show Cause Notice dated 28.4.95, which was adjudicated by the Commissioner of Appeal vide Order-in-Original and confirmed the demand of duty of the goods at Rs. 81,31,835/- and imposed a penalty of Rs. 15,00,000/- and Rs. 1,00,000/- and redemption fine of Rs. 1,00,000/- in lieu of confiscation of plant, machinery, land and building, etc.

3. The appellants preferred an appeal to the Tribunal during pendency of appeal. The appellants have deposited Rs. 1.00 lakh redemption fine under protest since they were ordered to deposit.

The Tribunal in its order dated 28.4.2001 has held that the goods in question are classifiable under sub-heading No. 8211.00, but set aside the Order-in-Original

confirming the demand of duty on the basis of being time barred demand and remanded the matter to the original adjudicating authority for quantifying the demand and accordingly appeal was disposed off.

4. The appellants have filed an application for refund of Rs. 1.00 lakh before the Deputy Commissioner of Central Excise, Rajkot, who in turn rejected the same on the ground that the Tribunal has not given any finding on this aspect while remanding the matter.

5. The Commissioner (Appeals) vide his order dated 18.02.2002 had rejected the appeal filed by the appellants in respect of refund of their claim for Rs. 1.00 lakh. Hence this appeal.

6. Perused the record and considered the submissions made by both sides. It is relevant to mention that consequent upon the remand order made by the Tribunal in respect of quantification of demand keeping in view of extended period of limitation, the Commissioner, Customs & Central Excise, Rajkot, had dropped the proceedings initiated vide Show Cause Notice No. V82 dated 28.4.1995. The Commissioner in para 5 of his order observed that "therefore, the duty for the larger period cannot be demanded and it should be restricted to six months from the date of receipt of Show Cause Notice".

In para 6 it is observed "Therefore, period of six months from the date of receipt of duty of Show Cause Notice, as directed by the Tribunal, is from 26.11.1994 to 25.05.1995 for the purpose of demand of duty of excise on account of change in classification of Kitchen Knives under Chapter Sub Heading No. 8211.00 instead of 8215.00 of the Central Excise Tariff. I find that duty of excise for the period of six months from the date of receipt of Show Cause Notice i.e. from 26.11.94 to 25.5.95 was not demanded in the principal proceedings as the said period was not covered by the said Show Cause Notice".

7. In the impugned order, the Commissioner (Appeals) had observed that the appellants did not challenge the order of Tribunal and become final. The question of challenging the order of Tribunal does not arise on the appellants sine they are not aggrieved by the same in any manner.

8. The Tribunal has made refund order for quantification of duty demand in light of extended period of limitation and the demand of duty was ultimately dropped by the Commissioner confirming the period of six months from the date of receipt of Show Cause Notice, which admittedly did not propose any duty in original proceedings. However, the Commissioner has also found that the appellants had already paid duty for that period. Therefore, the finding of the Commissioner (Appeals) in the impugned order is not tenable one, including the contention raised by the Department that the offence is still existing one.

9. In the light of aforesaid discussion, I find merit in the appeal filed by the appellants on this limited issue. Accordingly, appeal is allowed and the amount of Rs. 1.00 lakh deposited by the appellants towards redemption fine be refunded. Order accordingly.

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