

Rajkumar Forge Ltd. Vs. Commissioner of Central Excise

Rajkumar Forge Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/35333

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-21-2004

Reported in : (2004)(170)ELT178Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Rajkumar Forge Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Appellants are engaged in manufacture of 'forgings' to be used in the manufacture of shafts, gear, pinions, lever, couplings etc. They claimed exemption notification 223/88 dated 23.6.1988. They classified the products under 7226.90 and not under Chapter 84.

2. The admitted process of manufacture of forging is by means of open die castings the emerging entity has excess material as exact shape and specification desired is not obtained in open die castings. The entity emerging from the open die casting stage is subjected to further process. For this purpose they use the services of job workers. The process undertaken at the job workers' premises have been alleged and found to be as it appears from para of the impugned order after noting the process covered by notification 223/88 as follows: "5.2 A perusal of these processes will reveal that nowhere the notification provides that the process of trimming, milling, step trimming, etc could be carried out and even then the benefit of concessional rate, of duty provided under notification No. 223/88 will be

available to the manufacturer. It has not been disputed by the assessee that they have carried on the operations of trimming, milling, drilling, step trimming etc. Once these operations are carried out on the forging the benefit of notification No. 223/88 will not be available under Chapter 73 or Chapter 84 of the tariff.

The benefit of notification No. 223/88 will not be available to them as the process carried out by them are not specifically mentioned in the proviso to notification...." Thereafter, the Commissioner, after considering the statements on record and the fact that worksheet of demands were made on the basis of actual non permissible (i.e. not covered by the notification) jobs performed concluded that the steps taken were to convert the proof machined forgings into finished articles. After considering the stipulation in McGraw Hill Encyclopaedia of Science and Technology and the decisions of this Tribunal in the case of Sri Ranga Industries 1994 (72) ELT 638 wherein it was held that milling, drilling and trimming were not processes covered by Notification 223/88 and they had been earned out in this case and relying upon the decision of the Delhi High Court in case of Metal Forging Pvt. Ltd. 1985 (20) ELT 280 holding forged products machined, driller polished assume an altogether different character from what it was without forge and so as to make them identifiable or usable as machine parts" concluded that activities undertaken by the appellants would result in classification of the entities emerging under heading 84.83 by application of Rule 2 (a) of Rules of Interpretation for classification and further machining by customer would not cause alteration from classification under 84.83.

3. The Ld C.A. appearing for the appellants have relied upon lot of case laws but could not produce any material to upset the finding of new character of machinery part being arrived and by application of Rule 2 (a) classification under 84.83 called for as also that the additional steps/processes undertaken and admitted to be (SIC) covered by the proviso to the Notification 223/88. The case laws relied upon do not upset the finding in the case of Sri Ram Industries (1994 (72) ELT 638 to the effect that process of milling, drilling and trimming carried out go beyond mere removal of surface defects or removal of excess material. No technical literature produced to indicate that "step trimming"? is covered in the process mentioned in the notification and as proof machining. The order of the Commissioner can not be

upset on merits and as regards eligibility to Notification 223/88 and or classification.

4. As regards the valuation of scrap at Rs. 5 per kg by relying upon the challans of M/s Premier Automobiles Ltd., the duty demand are to be considered correct.

5. The issue of time bar pleaded has been dealt with by the Commissioner. The non mention of the alleged process on classification list which were in fact done would contribute deliberate misdeclaration. The fact of mentioning the same in Rule 57F (3) challans cannot absolve the appellant. The mere reading of the finding in bar of limitation as arrived by the Ld Commissioner in para 9 of the impugned order confirms the view that the plea of limitation is required to be rejected. We order the same.

6. The plea on interest under Section 11AB has to be upheld since the Show Cause Notice was issued before the Section was introduced.

7. The liability under Rule 173Q for penalty of Rs. 5 lakhs on the assess for a duty demand of Rs. 27,10,789/- are required to be upheld along with redemption fine of Rs. 1 lakh under Rule 173Q (2).

8. The appeal is therefore required to be dismissed and the order of the Commissioner is confirmed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com