Commissioner of Central Excise Vs. Mather and Platt (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-19-2004

Reported in : (2004)(171)ELT318Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Mather and Platt (i) Ltd.

Judgement :
1. This ROM application is filed by the Revenue against this Bench's final order No. A/326/WZB/2004/C-1 dated 20.2.2004. The application, though called a ROM, appears to be an appeal seeking review of the order passed by this Bench. On that count alone, the application can be rejected. In the case of Krishna Ultramarine & Chemicals Pvt. Ltd. vs.

CCE (2004 [167] ELT 58 [T]), it is held that rectification of mistake does not envisage rectification of an alleged error of judgment, if any. ROM by no means can be an appeal in disguise whereby an order, if it is not valid, is reheard and redecided. ROM application lies only for patent mistakes. Similarly, in Bhupendra Steel Pvt. Ltd. vs. CCE, New Delhi (2003 [161] ELT 341 [T]) it is held that a decision on a debatable point of law or facts is not a mistake apparent from the record. Rectification of mistake apparent does not envisage rectification of mistake of an alleged error of judgment. In spite of" these pronouncements, we wish to deal with this application, euphemistically called the ROM, on merits as well.

2. According to the applicant, the order of the Tribunal against which this application for ROM is filed, suffers from some apparent mistakes and therefore needs to be rectified.

3. The case of the Revenue briefly stated is that a thrust bearing assembly falls under chapter heading 84.82 of the Central Excise Tariff Act, 1985. Heading 84.82 reads as ball or roller bearings. The Tribunal in its order cited supra held that heading 84.82 does not cover machinery parts incorporating ball roller or needle roller bearings.

These are classified in their own appropriate headings, e.g. bearing housings under heading 84.83. While coming to this conclusion, the Bench relied upon HSN Notes under heading 84.82 which excludes machinery parts incorporating ball etc, bearings. It is an undisputed fact that bearing housings incorporating ball or roller bearings are classified under heading 84.83. The Revenue appears to be arguing that bearing assemblies also should be classified as bearings under 84.82 despite the fact that a separate heading exists for such assemblies.

The Revenue argues that the term 'bearing' as used in notification 6/2000 includes bearing assembly of balls, rollers and housing to constitute ball or roller bearing. The term 'bearing and bearing assembly', according to the Revenue, does not represent separate distinct products. We do not agree with this proposition at all. They are two distinct commodities. If one goes to market and asks for a bearing of a particular size, he is not offered a bearing assembly, to put it very mildly.

4. The learned SDR, Shri Saxena appearing for the Revenue, relied on the decision in the case of Integral Bearing Pvt. Ltd. (2001 [131] ELT 155) where the Tribunal held that water pump bearing consisting of combination of bearing and shaft can be used for various applications.

Therefore, such combination is classifiable under chapter heading 84.82. We have perused this decision. The Bench was considering the issue in a different context. The disputed entries in that case are 84.82 and 84.09. The Bench also did not refer either to the heading notes or to the fact that bearing assemblies are separately classified under chapter heading 84.83. This decision, therefore, does not bind us in any manner. The next decision relied upon by the learned SDR is in the case of Kirloskar Oil Engines (1991 [51] ELT 334). Apart from the fact that this decision of the Bombay High Court has been set aside by the Supreme Court, we observe that the issue pertained to the old tariff where the interpretative rules were not in existence. This decision, therefore, has no bearing on the present issue. It is also argued by Shri Saxena, SDR, that in the case of Kirloskar Oil Engines, the assessee settled the issue before the Settlement Commission, agreeing to the classification of similar goods under chapter heading 84.82. The fact that someone settled the dispute in a particular manner does not become a binding precedent for us to follow.

5. The learned SDR next argued that the Tribunal erred in extending the benefit of notification 6/2000 to bearing assemblies under the assumption that the exemption is not available to bearings falling under chapter heading 84.82 alone. It is argued that the notification clearly spells out that bearings falling under any chapter are not entitled to exemption. So, the fact that the thrust bearing assembly falls under 84.82 should not make any difference to the issue. We have considered this plea as well. That a notification should be construed strictly is an age old legal maxim. Notification 6/200 speaks of bearings. The goods in question, as we have repeatedly held, are not bearings but are bearing assemblies. Notification 6/2000 does not speak of bearing assemblies. Nothing further needs to be said insofar as this argument goes.