

Collector of C. Ex. Vs. Eastern Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-06-1987

Reported in : (1989)(43)ELT723TriDel

Appellant : Collector of C. Ex.

Respondent : Eastern Industries

Judgement :

1. The respondents M/s. Eastern Industries manufacture, amongst other articles, M.S. Rivets and Bright Drawn Bars. Notice dated 17-10-1981 was issued to them as to why duty should not be realized from them on the said goods during the period 1-8-1980 to 6-4-1981 and why they should not be required to take out a Central Excise Licence and penalty should not be imposed. Under his order dated 22-3-1982 the Deputy Collector of Central Excise, Calcutta confirmed the duty demand but did not insist on the respondents taking out a licence in view of Notification No. 103/81. He did not impose any penalty also. On appeal the Collector of Central Excise (Appeals) under the order dated 15-12-1982 accepted the case of the respondents with reference to the bright drawn bars. So far as the rivets were concerned he held that even if they were made out of M.S. rounds by forging process they could not longer be classifiable as Iron and Steel Products under T.I. 26-AA (ia) and would be correctly classifiable under Item 68 CET. He accordingly allowed the appeal with the above findings with the directions to grant consequential relief. This appeal is by the Collector of Central Excise, Calcutta against the said order. Though the respondents have preferred cross-objections

thereto, it is to be seen that no relief is claimed thereunder except dismissal of the appeal. Hence the said cross-objection is to be dismissed since the matter of grant of relief under the appeal would be considered in the appeal itself.

2. We have heard Smt. Saxena for the Deptt. and Shri S.K. Sinha, Advocate for the respondents.

3. It appears that the process of manufacture of rivets consists of cutting the rod to the required length, then die-forging the same to form the hemispherical head and then finning the other end to form the tapering end. The case for the Deptt. is the item would fall for classification under Item 26-AA(ia) CET on the ground that it would be a forged shape not otherwise specified. As already seen the process of manufacture, apart from forging consists of finning also. As to what would a shape or section as mentioned in the above item the respondents rely on the Central Board of Excise and Customs' letter No.345/3/79-TRU, dated 25-4-1979 printed at page 555 of the Census Central Excise Tariff 1984-85. No doubt Mrs. Saxena points out that this letter has been issued with reference to Item 27(b) CET as it then stood and not with reference to Item 26-AA. But Item 27(b) read "manufactures, the following, namely, plates, sheets, circles, strips, shapes and sections, in any form or size, not otherwise specified." Therefore the words shapes and sections occurring therein is not restricted to the said Item 27 only and hence the clarification given with reference to those words under Item 27 would be equally applicable wherever the same words are found in the Tariff. It had been clarified under the said letter that the expression shapes and sections would exclude items which had assumed the character of any specified article. It had therefore been clarified that the words shapes and sections under Item 27(b) will not cover articles of aluminium like Jars, Rings, Spoons etc. though they may have been manufacturers of aluminium.

4. It is therefore clear that though the rivets may have been formed by the die-forging process, they would not fall within the expression shapes and sections not otherwise specified since these rivets are distinctly known products having their own specific name.

5. We therefore hold that the Collector (Appeals) was correct in holding that the rivets were properly classifiable under Item 68 CET during the relevant period and not under Item 26-AA(ia). As earlier mentioned this appeal is only with reference to the order of the Collector relating to rivets. In view of our conclusion above noted this appeal is dismissed.

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