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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-22-2004

Reported in : (2005)(98)ECC134

Judge : S Kang, Vice-, a T V.K., M T K.C.

Appellant : Commissioner of Central Excise

Respondent : ivp Ltd.

Judgement :

1. The issue referred for consideration of the Larger Bench is whether "AA Nozzles" made of ceramic nozzles manufactured by M/s. IVP Ltd. are classifiable under Heading No. 69.01 of the Schedule to the Central Excise Tariff Act or under Heading 85.15 of the Central Excise Tariff.

2. Mrs. Krishna A. Mishra, learned Senior Departmental Representative, submitted that the respondents M/s. IVP Ltd. manufacture industrial ceramic nozzles and has sought classification under Heading 85.15 of the tariff on the ground that these are suitable for use solely with welding machines which fall under Heading 85.15; that the Appellate Tribunal in the case of NTB Hitech Ceramics v. CCE & Customs, Pune [2001 (127) E.L.T. 200 (Tri.)] has classified ceramic nozzles under 1 leading 85.15 on the ground that there is no exclusion of goods of Chapter 69 in Chapter 85 of the Tariff and as the impugned goods are for use solely or principally in the welding machine, they are classifiable under Heading 85.15; that the co-ordinate Bench in the matter of respondents is of the view that since ceramic nozzles are

not classifiable in any of the Heading of Chapter 84 or Chapter 85, the classification of these goods must be looked into Heading outside Chapters 84 and 85 and since ceramic nozzles are specifically covered under Heading 69.01, the classification in that Heading is the most appropriate instead of Heading No. 85.15.

3. Learned Senior Departmental Representative submitted that Heading No. 69.01 applies to refractory ceramics goods such as retorts, crucibles, muffles, nozzles, plugs, supports, cupels, tubes, pipes, sheaths and rods; that thus ceramics nozzles are specifically mentioned in Heading No. 69.01 of the Tariff; that once the product is specifically covered by any Heading of the Tariff, it has to be classified therein; that Rule 3(a) of the Rules for the Interpretation of the Schedule clearly provides that Heading which provides most specific description shall be preferred to the Heading providing a more general description. She relied upon the decision in the case of Emco Lenze Pvt. Ltd. v. Commissioner of Customs, Airport, Mumbai [2003 (156) E.L.T. 905 (Tri. - Mumbai)] wherein it has been held that "It is well settled principle of interpretation that the specific entry takes precedent over the general." She also mentioned that there is no exclusion clause in Chapter 69 to exclude parts of welding machines from the purview of Chapter 69. She also contended that Note 2 to Section XVI of the Tariff contains instructions for the classification of the goods. Sub-clause (a) of Note 2 provides that parts/goods which are included in any of the Heading of Chapter 84 or Chapter 85 are in all cases to be classified in their respective Headings; that Explanatory Notes of HSN clearly mentions that "subject to certain exclusions provided in the Notes in this Section and to Chapters 84 and 85 and apart from the goods covered more specifically in other Sections, this Section covers all mechanical or electrical machinery." She contended that it is apparent from the Explanatory Notes that if the goods are more specifically covered in other Sections of the Tariff, these will not be classified under Chapters 84 and 85; that as ceramics nozzle is specifically covered by Heading 69.01, it has to be classified therein. Finally, she submitted that in NTB Hitech Ceramics case, the Appellate Tribunal has classified ceramics nozzles in Chapter 85 on the ground that there was no specific exclusion of the goods falling under Chapter 69 in Chapter 85 of the Tariff; that once a product is specifically covered by a Chapter description, it has not to be specifically excluded

from any other Chapter as held by the Appellate Tribunal in the case of Emco Lenze Pvt. Ltd. (supra); that in Emco Lenze case, the issue involved was the classification of friction material whether under Heading 68.13 or under Heading 85.05; that the contention of the appellants was that friction material was clearly identifiable parts of electrical mechanical clutches and brakes and therefore, should be classifiable under Heading 8505.90 and Chapter 85 does not specifically excludes classification of these goods. The Tribunal has held that the scope of Heading themselves gives a clear indication as to their classification and Heading 68.13 is for friction material which is more specific than the general Heading for parts of brakes and clutches. The Tribunal has classified the said goods under Heading 68.13 even if these were not specifically excluded from Chapter 4. Countering the argument Shri Gopal Prasad, learned Advocate, submitted that it is not in dispute that ceramics nozzles in question are suitable for use solely or principally with welding machines; that in the present matter, Note 2(a) of Section XVI of the Tariff is not applicable; that it is only Note 2(b) which is applicable which clearly provides that other parts if suitable for use solely or principally with a particular kind of machine are to be classified with the machines of that kind; that as the nozzles in question are parts of welding machines, they have to be classified along with the machines under Heading 85.15. He further submitted that the preconditions for the applicability of Section Note 2(a) is that there must exists a specific Heading for the article under Chapter 84 or Chapter 85; that in that case, the article will get classified under a Heading applicable to that particular article and not along with the machines; that in the present matter, admittedly there is no Heading under Chapter 84 or Chapter 85 covering ceramics nozzles as such; that accordingly Note 2(a) does not get attracted because ceramics nozzles is not goods included in any of the Heading of Chapter 84 or ChapterKeyar Industries v. CCE, Madras [1997 (91) E.L.T. 587 (Tribunal)] wherein the Tribunal has classified air handling unit under Heading 84.15 as the same was used solely or principally with the air controlling machine applying Note 2(b) of Section XVI. Reliance has also been placed on the decision in the case of Mathar and Platt (I) Ltd. v. CCE, Pune-I [2004 (167) E.L.T.287 (Tri.)].

5. We have considered the submissions of both the sides. It is not in dispute that Heading No. 69.01 of the Central Excise Tariff specifically mentions ceramics

goods and ceramics nozzles. The respondents however want to classify the impugned goods under Heading 85.15 on the ground that these are parts of Welding machines which is classifiable under Heading 85.15 and as per Note 2(b) to Section XVI of the Tariff, the parts are to be classified along with the ma chines.

After referring to Chapter 69, Section XVI and Chapter 85 of the Central Excise Tariff, we do not find any force in the submissions made by the learned Advocate for the respondents. As per Rule 1 of the Rules for the Interpretation of Schedule to the Central Excise Tariff Act, classification has to be determined "ac cording to the terms of Heading and any relative Section or Chapter Notes". As the Heading 69.01 clearly mentions ceramics nozzles, it has to be classified under said Chapter as there is no Section Note or Chapter Note excluding the parts of welding machine made of ceramics from the purview of Chapter 69.

Once the ceramics nozzle is specifically covered by Heading 69.01, it cannot be classified by referring to Note 2 to Section XVI of the Tariff. It is mentioned in the Explanatory Notes of HSN that the refractory goods are to have special property of resisting high temperature and that according to particular uses for which they are intended, refractory articles may also need to withstand rapid changes of tem perature. It is thus apparent that the refractory articles may have special, particular uses but the product will remain classified, if made of ceramics, under Chapter 69 only. We also find force in the submissions of learned Senior Departmental Representative, that a specific Heading takes precedence over the general one. Heading 69.01 is a specific Heading for nozzles whereas its classification under Heading 85.15 is as general as parts of welding machines. Further, Rule 3 of the Interpretative Rules also provides that "Heading which provides the most specific description shall be preferred to Headings providing a mere general description." Thus, applying Rules of Interpretation and specific mentioning of nozzles in Chapter 69, we hold that ceramics nozzles are classifiable under Heading 69.01. In our view, no specific exclusion, as required to be given in Chapter 85 as nozzles are specifically covered by Chapter 69 of the Tariff. This was also the view expressed by the Tribunal in the case of Emco Lenze Pvt.

Ltd. v. CC [2003 (156) E.L.T. 905]. We, therefore, do not agree with the view of the Tribunal in the case of NTB Hitech Ceramics (supra) and hold that ceramics nozzles are classifiable under Heading 69.01 of the Central Excise Tariff. Reference is answered accordingly.

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