Collector of Central Excise Vs. Bata (India) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-20-1987

Reported in : (1987)(13)LC516Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Bata (India) Ltd.

Judgement :

1. Under order dated 13-12-1979 the Collector of Central Excise, Calcutta confirmed the demands raised under three show cause notices dated 4-8-1979, 9-8-79 and 4-9-1979 respectively and further imposed a penalty of Rs. 50,000/- on the respondents M/s. Bata (India) Ltd. Under two other orders dated 11-3-1980 the Collector confirmed further demands for duty but did not impose any further penalty in view of the penalty already imposed under order dated 13-12-1979. The issue in all these matters related to the classification of the cutting dies and cutting discs manufactured by the respondents which they claimed fell under Item 68 GET. The Collector observed that the goods fell under Item 51-A(iv) GET and that though the Company had been informed about such a classification under an earlier order of the Assistant Collector and had been directed not to remove the goods except under the said classification they had chosen to ignore the same and had been removing the goods without payment of duty. It is in view of the above reasons that he confirmed the demands for duty and also imposed penalty as mentioned above. The respondents appealed to the Central Board of Excise and Customs against all the three orders. Under order dated 28-2-1981/2-6-1981

the Central Board held that the goods were classifiable under Item 68 CET. Accordingly the demands confirmed by the Collector as well as the imposition of penalty were set aside. The Central Government being of the view that the said order of the Central Board was not proper, legal and correct issued notice dated 15-2-1982 under Section 36(2) of the Central Excises and Salt Act indicating that in the tentative view of the Central Government the proper classification of the goods was Item 51-A(iv) CET and accordingly the orders of the Collector were correct and the Central Govt. therefore proposed to set aside the order of the Central Board and restore the orders of the Collector. The respondents replied supporting the conclusions of the Central Board. It is the proceedings initiated under the said notice that, on transfer to this Tribunal, are now before us as this deemed appeal.

2. We have heard Smt. Saxena for the Department and Shri M.Chandrasekharan for the respondent.

3. As earlier noted, the order of the Central Board is dated 28-2-1981/2-6-1981. Notice under Section 36(2) had been issued on 15-2-1982. The proceedings before the Collector were all with reference to demands for payment of duty. In the circumstances Shri Chandrasekharan raised a preliminary objection that the review notice of the Central Govt. was barred by limitation since the same is governed by the 2nd proviso to Section 36(2). In support of his contention he relied on the decision of this Tribunal in the case of Ashok Kumar Shiv Kumar (1986 Vol. 26 ELT 947). When it was pointed out to him that the objection may be valid with reference to orders dated 11-3--1980 under both of which demands for duty alone were confirmed but may not be wholly valid with reference to the order dated 13-12-1979 under which apart from confirming demands for duty the Collector had imposed penalty also, Shri Chandrasekharan conceded that in respect of the said matter the bar of limitation may not apply so far as that portion of the order sought to be restored under which penalty had been imposed. Smt. Saxena submitted that in view of the order of this Tribunal cited supra she had no further submissions to make on the question of limitation except to reiterate the submissions made for the Department in the case cited. Following the decision cited supra we held that the review notice should be held to have become barred

by time so far as it proposed to restore the orders of the Collector under which demands for duty were confirmed but that there would be no question of bar of limitation in respect of that part of the order of the Collector dated 13-12-1979 under which penalty had been imposed. Hence submissions were thereafter heard on the said question only.

4. The question whether penalty could be imposed would certainly revolve on the question of proper classification and, therefore, submissions were made by both sides on the question of proper classification of the goods. No doubt in one of the later hearings Shri Sachar, who represented the Deptt. in the said hearing, raised a contention that the respondents had admittedly not filed any appeal against the order of the Assistant Collector under which classification had been ordered under Item 51-A(iv) GET and the question of classification had therefore become concluded and that the respondents were not entitled to raise any contention on that matter in the present proceedings. The answer of Shri Chandrasekharan to this submission was that the present proceedings having arisen out of a review notice issued by the Central Govt., it is only the objections raised by the Central Govt. under that notice to the validity of the order of the Central Board that alone could be gone into and no other ground than had been set forth in the notice of the Govt. could be allowed to be urged on behalf of the Govt. His submission was that the Deptt. should not be allowed to now raise any objection regarding the validity of the order of the Central Board on the basis that the Central Board was not entitled to, and had no jurisdiction to, go into the question of proper classification in view of the absence of any appeal against the earlier order of the Assistant Collector on the question of classification.

Shri Sachar in turn submitted that as the present proceedings are in the nature of an appeal it would be open to the Deptt. (who are in the position of appellants) to raise any additional grounds also, so long as these grounds are either on mere questions of law or on the basis of admitted facts.

5. But it appears to us that Shri Chandrasekharan is correct in his contention. Proceedings under Section 36 (as it then stood) were to be initiated by the Central Govt. only. That is to say, it was the opinion of the Central Govt. as to the grounds

for holding the impugned order to be not legal, proper correct that would be therein relevant. That means the jurisdiction to come to a tentative conclusion regarding the illegality and incorrectness of the impugned order vested with the Central Govt. only and it would only be the reasons set forth by the Central Govt. for coming to that tentative conclusion that would be relevant and necessary to be considered in proceedings initiated under Section 36. The proceeding initiated under Section 36 is being treated as an appeal before this Tribunal by way of a deeming fiction only. The said fiction would not extend to convert the said proceedings before the Tribunal into a full-fledged appeal in the normal sense, in order to entitle either party to claim rights that would be available to either party in cases of such normal statutory appeals. It is only in appeals preferred in the normal course that the right to raise additional grounds would arise since such a right is specifically conferred under the statute which provides for the right of appeal or the values thereunder. We are satisfied that no such right could be claimed by the department in proceedings initiated under Section 36 (and received on transfer), since, as earlier noted, it is only the grounds that compelled the Central Govt. to issue the notice that would be relevant in the transferred proceedings also and no further grounds could be pressed into service in questioning the legality of the order under consideration. The Central Govt. did not, in its notice, question the correctness or legality of the order of the Central Board on the ground that the Central Board had no jurisdiction to go into the question of classification. We feel that this Tribunal cannot, in such transferred proceedings, add another ground (to the ground stated in the notice) to canvas the correctness or legality of the order of the Central Board.

6. We are therefore satisfied that the only issue to be considered would be whether, as set forth in paragraph of the review notice, the goods would be Industrial knives and therefore classifiable under Item 51A(iv) CET. The respondents have been describing the goods as cutting dies and cutting discs. The reason stated in the review notice for classification under Item 51-A(iv) GET is that the goods are not merely dies but are industrial knives inasmuch as they cut leather or rubber sheet of a predetermined shape or size. It is also mentioned that they also trim the surface of the leather while cutting because no further trimming is necessary at a later stage. In their reply and subseqeuntly the respondents had

taken objection to the latter portion since they claimed that no trimming was done, or could be done, by the products in question and that they performed only the job of cutting. We find that this question of trimming was never raised until the review notice was issued and that even now there is no proof that such trimming is done by the products. Therefore, we will have to ignore this assertion in the review notice regarding trimming also being done by the products.

7. The products appear to be so fabricated that by placing the same on the leather or rubber sheet to be processed and applying pressure, the leather or rubber sheet is cut into the required shape and that the product is then moved manually and the process repeated until the entire sheet is used up for cutting therefrom the pieces of the required shape. It is the case for the respondents that these products are not fitted to any tools and that the movement thereof over the leather or rubber sheet is manual. The order of the Board on the question of classification is cryptic and gives no reasons for its conclusions. It reads as follows : "On an inspection of the samples produced at the personal hearing and various submissions of the appellants, the Board accepts the contention of the appellants that the goods in question are neither classifiable under GET Item No. 51-A(iv) nor even under Item 51-A(Hi) as the Board is of the view that the goods in question cannot be considered as 'industrial knives and blades for hand or machine saws".

8. On the question that the products are known as knives in the trade no evidence has been produced for the Department. The respondents have produced several certificates by way of Annexures A to F of the reply to the review notice to the effect that the products are known as cutting dies and not as industrial knives and are not marketed as knives.

9. This Tribunal had considered a similar case in E-A. No. 380/82-D in the case of M/s. Bi-metal Bearings Ltd., the dies in the said case being for cutting out of sheets of metal a particular shape. Relying on an earlier decision of the Tribunal in the case of Union Carbide India Ltd. (198f Vol. 3 ETR 56), the Tribunal held that the product in issue was not a knife and would fall for classification under Item 51-A(iii) GET. There the die was to be fitted to a machine tool and operated for cutting metal to a pre-determined shape. In our case we have seen that the movements of

the die over the leather or rubber sheet is to be done manually only. Therefore, we hold that so far as the products in issue are concerned they would not fall for classification either under Item 51-A(iv) or M-A(iii).

10. We accordingly hold that the imposition of penalty also was not justified. Accordingly the review notice dated 15-2-1982 is discharged and this appeal is dismissed..

I have carefully perused the Order proposed by learned Brother Raghavachari.

12. On the question discussed in para 5 of Shri Raghavachari's order, I would like to say a few words. The Central Government had the necessary power under Section 36 of the Central Excises and Salt Act, as it stood at the material time, to go into the question of the correctness, propriety or legality of the Board's order. It could certainly have called upon the respondent to show cause why the Board's order should not be set aside as not ,being correct, proper or legal inasmuch as the Collector's order had not gone into the question of proper classification of the goods in view of the absence of any appeal by the assessee against the order of the Assistant Collector on the question of classification and, therefore, the Board ought not have gone into the question of classification. However, the Central Government apparently did not think on those lines as evidenced by the fact that this was not set out as one of the grounds on which the Board's order was proposed to be reviewed. We are, therefore, of the opinion that the Revenue cannot be permitted to attack the impugned order at this stage on this new ground. We, therefore, propose to confine ourselves to the strict confines of the grounds set out in the notice under Section 36(2) of the Central Excises and Salt Act issued by the Central Government to the respondent.

13. However, I agree with the conclusion and the manner of disposal of the appeal, that is to say, to discharge the review notice dated 15-2-1982 and dismiss this appeal.