Commissioner of Central Excise Vs. Suchitra Components

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-14-2005

Reported in : (2005)(100)ECC59

Judge : S Kang, Vice, A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Suchitra Components

Judgement :

1. The issue involved in this Appeal, filed by Revenue is whether the demand can be raised for past six months in respect of excisable goods cleared on the basis of classification list approved by the competent officer.

2. Mrs. Krishna A. Mishra, learned Senior Departmental Representative, mentioned that M/s. Suchitra Components manufactured "Fly Back Transformers' which were classified by them in their classification list under Heading 85.29 of the Schedule to the Central Excise Tariff Act which was approved by the Assistant Commissioner on 30.4.1990; that subsequently a show cause notice dated 29.8.90 was issued to the Respondents for demanding the differential duty as the impugned goods were classifiable under Heading 85.04 of the Tariff in terms of Board's Circular No. 19/90-CX 4 dated 9.7.1990; that the Assistant Commissioner, under Order-in-Original No. 7/91 dated 11.11.1990, classified the impugned goods under Heading No. 85.04 and confirmed the demand of differential Central Excise duty for the period from 1.3.1990 to 29.8.90; that Commissioner (Appeals) under

the impugned Order set aside the demand of duty and ordered that the changed classification would be effective from 29.8.90 i.e. from the date of issue of the show cause notice; that the Tribunal also, vide Final Order No. 367/2000-B dated 8.3.2000 rejected the Appeal following the decision of the Supreme Court in the case of CCE, Baroda v. Cotspun Ltd., 2000 (69) ECC 451 (SC) : 1999 (113) ELT 353 (SC). She, further, mentioned that on Appeal, the Supreme Court in the judgment dated 13.1.2003 in the case of Easland Combines, Coimbatore v. CCE, Coimbatore, 2003 (85) ECC 496 (SC) has remitted the matter to the Tribunal for deciding the question of classification and other issue.

3. The learned Senior Departmental Representative submitted that the Supreme Court has held in Easland Combines case that "in view of the amendment of Section 11A(1), the decision rendered by this Court in Cotspun's case (supra) would not be a good law. Show cause notice for correcting errors or mistakes in approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under the provisions of the Act or the Rules made thereunder could be issued within the prescribed period." She thus contended that demand of duty can be confirmed for past period even if the classification list has been approved by the Proper Officer.

4. Shri A. R. Madhav Rao, learned Advocate, mentioned that the Respondents are not challenging the classification of the impugned goods under Heading No. 85.04 of the Tariff. He, however, relied upon the decision in the case of Arvind Chemi Synthetics Pvt. Ltd. v. CCE Delhi III, 2004 (164) ELT 209 (T) wherein the Tribunal has held that "Board's Circular issued under Section 37B, would be effective from the date of its notification for publication and no demand of duty for the period prior to that date, can be raised." Reliance has also been placed on the decision in the case of Eswaran & Sons Engineers Ltd. v.CCE, Madras, 1999 (112) ELT 1011 (T). He contended that as the Board's Circular classifying the impugned goods under Heading 85.04 was issued on 9.7.90, the demand of duty cannot be confirmed for the period prior to 9.7.90.

5. We have considered the submissions of both the sides. Section 110 of the Finance Act, 2000 provides that any notice issued under Section 11A of the

Central Excise Act demanding duty on account of non/short payment shall be deemed to be and to always have been, for all purposes, validly and effectively issued or served under that Section, notwithstanding any approval, acceptance or assessment relating to the rate of duty on, or value of, the excisable goods by any Central Excise officer. Thus, by virtue of the said Section 110 of the Finance Act, duty of excise can be demanded for the past period even if the proper officer has approved the classification list. This was the judgment also of the Apex Court in the case of Easland Combines. The decision of the Tribunal in the case of Arvind Chemi Synthetics Pvt. Ltd. is not applicable to the facts of the present case. In the said matter, the Board had issued an Order under Section 37-B of the Central Excise Act for the purpose of uniformity in the classification of excisable goods.

In view of this, the Supreme Court has held in H.M. Bags Manufacturer v. CCE, 1997 (94) ELT 3 (SC) that the Board's Circulars under Section 37 B would be effective from the date of issue. In the present matter, the product in question had been classified by the Department under Heading 85.04 even before the Circular dated 9.7.90 was issued by the Board. The Board has therefore, clarified the matter, after discussing the matter in the South Zone Tariff cum-General Conference, that the impugned goods are appropriately classifiable under Heading 85.04 of the Tariff. This Circular has not been issued in exercise of the powers under Section 37-B of the Central Excise Act, with a view to achieve uniformity in the classification of goods but to remove the doubts and 85.04 being the appropriate Heading. Thus, the duty can be demanded by Revenue, in terms of the provisions of Section 110 of the Finance Act, 2000 and in view of the judgment of the Supreme Court in the case of Easland Combines, for the period of six months prior to the date of issue of show cause notice. As in the present matter, demand of duty has been confirmed for the period from 1.3.90 to 28.8.90 under show cause notice dated 29.8.90, the same is within the period of six months specified in Section 11A of the Central Excise Act. We, therefore, allow the appeal.