

M.G. Electronics Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-27-2005

Judge : R Abichandani, M T K.C.

Appellant : M.G. Electronics

Respondent : Cce

Judgement :

1. This appeal was remanded back for decision by the Supreme Court in C A No. 8113-8114 of 2001 along with other cases with the following directions:- "The appeals were allowed by the Tribunal relying on the decision rendered by this Court in Cotspun's case. However, on facts, it is agreed that the matter requires to be remitted to the Tribunal for deciding the question of classification and other issues. In the result, the appeals are partly allowed. The impugned order passed by the Tribunal is set aside. The Tribunal to decide the contention raised by the respondents with regard to classification of the goods in question and other issues, if any." 2. The facts of the case, in brief, are that the appellants had filed classification list effective from 1.3.89 (Range Sl. No. 3/MGE/89). In column 6 of the said classification list, they have described the excisable goods manufactured by them intended to be removed from the factory as "Parts suitable for use solely or principally with the apparatus of Heading No. 85.25 to 85.29 namely Deflection components for T.V. sets parts namely (i) EHT Transformers (ii) Deflection Yoke (iii) Linearity Coil (iv) Line Driver transformers (v) T.V. Tuner (vi) Width Coil (vii) SMPS Transformers and (viii) Oscillator Coil, under sub-heading 8529.00 of the

Central Excise Tariff Showing excise duty at the rate of 15% ad valorem basic excise duty and 5% of the basic excise duty as special excise duty. Show cause notice was issued to them for changing classification of EHT transformer, Line Driver transformer and SMPS transformer to heading 8504.00 and duty of Rs. 3,99,516,33 for the period 1.7.89 to 19.1.90 was also demanded. The case was adjudicated by the Additional Collector who under the impugned order classified the above said EHT transformer, Line Driver transformer and SMPS transformer under heading 8504.00 of the Central Excise Tariff and confirmed the differential duty of Rs. 3,99,516.33 under Section 11A of the Central Excise Act. The appeal filed before the Tribunal against the order of the Additional Collector was allowed by the Tribunal under Final Order No. 1435/99-BI dated 23.12.99. The application for rectification of mistake was filed by the Commissioner of Central Excise, Meerut-I for modification of this Final Order No. 1435/99-BI, in view of the amendment of the provisions relating to time bar in Central Excise Act (Section 11A) with retrospective effect in the Finance Act, 2000 which received the assent of the President on 12.5.2000. This application for rectification of mistake was rejected by the Tribunal under Misc. Order No. 41/2001-B dated 4.5.2001. The Commissioner of Central Excise, Meerut filed Civil Appeals Nos.

8113-8814/2001 before the Hon'ble Supreme Court by which the order of the Tribunal was set aside and the case was remitted Central Excise Tariff, according to which, parts which are goods included in any of the headings of Chapters 84 & 85 (other than headings Nos. 84.85 and 85.48) are in all cases to be classified in their respective headings.

In view of this Note, he states that transformers are correctly classifiable under heading 8504.00 and the differential duty has been correctly demanded.

5. We find the Tribunal in its Final Order No. 1435/99-B dated 23.12.99 had allowed the appeal only on one ground that in view of the decision of the Supreme Court; in CCE, Baroda v. Cotspum Ltd. - 1999 (34) RLT - 709, the demand was held time bar. Consequent to retrospective amendment of Section 11A by Section 110 of the Finance Act, 2000, if the classification is found otherwise than what has been approved, then the department is free to demand duty short paid from the

assessee with retrospective effect. The classification of the disputed items namely EHT transformer, Line Driver transformer and SMPS transformer, has to be decided as per Note 2 of Section XVI of Central Excise Tariff.

Section Note 2(a) of Section XVI is as under:- "Parts which are goods included in any of the headings of Chapters 84 & 85 (other than headings Nos. 84.85 and 85.48) are in all cases to be classified in their respective headings." Note 2(a) of Section XVI of the Central Excise Tariff is very specific that if the parts which are goods included in any of the Headings of Chapters 84 and 85, these are to be classified in their respective headings. Since there is specific entry for transformers to the Tribunal for deciding the question of classification and other issues.

3. None appeared for the appellants despite the fact that the case was on Board. No application for any adjournment was received. Therefore, the case was taken up for decision on merits.

4. Shri Vikas Kumar, learned SDR appearing for the Revenue, pleaded that in view of the decision of the Supreme Court in the case of ITW Signode India Ltd. v. Collector of Central Excise - , amendment to Section 11A of the Central Excise Act, 1944 by Section 110 of the Finance Act, 2000, short levy can be recovered if a finding is arrived at that the goods had undergone a short-levy. On the basis of classification list in case of short levy, it can be recovered. The provisions of Section 11A is recovery provisions as regards non-levy or duty short paid or short levied or erroneously refunded. By the said amendment, the Parliament has provided that an approval on basis of a classification list inter alia in case of a short-levy can be recovered if a finding is arrived at that the goods had undergone a short-levy.

For the aforesaid reason, clause 110 of the Finance Act validating actions taken under Section 11A can be taken into consideration whereby and whereunder a legal fiction is created. He, therefore, leded if the classification is modified then the department can recover the duty short paid for a period of past six months if no fraud or collusion is alleged. In the present case, the disputed items are transformers and these are correctly classifiable under heading 8504.00 as there

is specific heading for transformers. He referred to Note 2 (a) of Section XVI of the under heading 85.04, therefore, the disputed transformers have to be classified under heading 8504.00 and not under heading 85.29 as claimed by the appellants. Therefore, the order of the Additional Collector is according to law and the same is upheld and the appeal is rejected.

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