

Rolex Industries Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-13-2005

Judge : A Wadhwa, A M Moheb

Appellant : Rolex Industries

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellant is a manufacturer of forgings falling under Chapter Heading 72.08 of the Schedule to CETA. During the period 1986-87 and 1987-88 the appellants manufactured forgings of iron and steel on his own account and on job work also. The Departments' allegation was that the appellant exceeded the limit of Rs. 15 lakhs under Notification No.175/86 when the value of goods on the above accounts were added and therefore was liable to pay duty on all goods cleared in excess of the value of Rs. 15 lakhs in a financial year. The appellant agreed that the goods manufactured by him fall under Tariff Item 7308.90 and paid duty payable on goods falling under this heading for the year 1987-88.

A show cause notice was however issued asking the appellant to explain why duty of Rs. 1,30,986.35 on goods falling under Chapter Heading 7308.90 manufactured during the year 1986-87 should not be demanded and why penalties should not be imposed.

2. The notice was adjudicated upon by Additional Collector of Excise who demanded the said sum and imposed penalties. The appellant came in appeal

before the Tribunal. The grounds were that the Additional Collector erred in holding that the goods in question fall under Chapter Heading 7308.90. The contention was that they are rightly classifiable under 7208 as a pieces roughly shaped by rolling or forging of iron or steel not elsewhere specified. It was contended that the Additional Collector decided the classification of goods under 7308.90 without any basis.

3. In appeal the Tribunal remanded the matter to the original authority stating thus: Therefore, while setting aside the impugned order in so far as the appellants firm is concerned, we allow the appeals by remand, and direct the adjudicating authority to decide the case de novo in the light of the Tribunal's judgment, mentioned supra. In other words, if the products are forgings and have not been subjected to any machining other than the processes, mentioned in Board's circular dt. 4-6-87, mentioned above, they should be classified under Tariff Heading 72.08 during the relevant period under consideration. Duty liability, if any be re-determined on the basis of the findings on the aforesaid question. Appeal is thus allowed by remand.

4. The Commissioner during de novo proceedings agreed that the goods under question do fall under 72.08 as the forgings were not worked beyond proof machining. The Tribunal directed him to follow the decisions in Aravali Forgings and Ors. v. CCE and the clarification issued by the Board in F.No. 1139/79/87-CX IV dated 4-6-1987 in the matter of classification of forgings while remanding the case for de novo consideration. The case was remanded for this limited purpose. However the appellant argued that he was entitled to the benefit of Notification Nos. 208/83 and 214/86 C.E. before the Commissioner. The contention in regard to eligibility to Notification No. 208/83 was rejected by the Commissioner stating we quote "As regards eligibility under Notification No. 208/83 I find that there is nothing on record of this case, either from defending party or from the Department, whether the requirements and the conditions of Notification No. 208/83 were satisfied in the case of forgings in question.

Therefore the benefit of Notification No. 208/83 was not admissible".

He also rejected the contention that the appellant was eligible for the benefit of Notification No. 214/86 holding that none of the procedures prescribed under that Notification was followed by the claimant.

6. The Tribunal remanded the matter in the earlier round of litigation with clear directions that the adjudicating authority should examine the evidence tendered by both the parties (Department and the Assessee) to establish that the appellant did not carry out any process beyond proof machining on the forgings. The Tribunal also directed that the Boards' classification referred to above and the decision of the Tribunal in Aravnli Forgings should be kept in mind while re-adjudicating the case. The Commissioner followed these directions and held that the goods are classifiable under 72.08. It is the appellant who brought in issues extraneous such as eligibility to Notification Nos. 208/83 and 214/86 contrary to the directions of the Tribunal in the remand order. They have been rightly rejected by the Commissioner. The Id. SDR relied on the decision of the Tribunal (Larger Bench) in the case of Bombay Dyeing & Mfg. Co. Ltd. v. Collector of Central Excise, Mumbai that when it is established that claimants of the benefits under the notification failed proving the circumstances warranting its application, the Tribunal is not go into the hypothetical question of the scope and binding nature of the notification and argued that the eligibility to the notifications should not be entertained at this stage. We agree with this contention of the Id. SDR. The Commissioner has rightly rejected the plea of applicability of Notifications 208/83 and 214/86.

Since the remand order is fully complied with by the Commissioner and his conclusions are legal and proper we so see no reason to interfere with the impugned order.

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