

Collector of Central Excise Vs. Telco Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-01-1988

Reported in : (1989)(22)ECC244

Appellant : Collector of Central Excise

Respondent : Telco Ltd.

Judgement :

1. The facts of 'the case, briefly stated, are that the respondents are engaged in the manufacture of motor vehicles. They had been permitted by the Central Excise authorities at Jamshedpur to procure from Madras, Nasik and Rajkot, fasteners in terms of the procedure set out in Chapter X of the Central Excise Rules, 1944 (hereinafter referred to as 'the Rules'). It appears that the Excise authorities at these three places had assessed the goods in dispute, namely, fasteners for motor vehicles, under Item No. 68 of the Central Excise Tariff Schedule (CET, for short) at 8% ad valorem. It further appears that, at some stage, the Central Excise authorities at Jamshedpur considered that some of these fasteners which had been classified under Item No. 68, CET, by the Excise authorities at Madras, Nasik and Rajkot were really not such as could be considered as parts of motor vehicles but only as fasteners attracting classification under Item No. 52, CET. On this basis, the Superintendent of Central Excise advised the respondents that these fasteners should not have been procured by them under Item No. 68, CET, free of duty in terms of Chapter X of the Rules. Thereupon, the respondents made a representation to the Assistant Collector, who considered the classification of the

fasteners in dispute and held that they fell under Item No. 52 of the CET. He, therefore, upheld the Superintendent's action. In appeal, by the impugned order dated 3-8-1983, the Appellate Collector set aside the Assistant Collector's order on the ground that the Excise authorities at Jamshedpur had no jurisdiction to change the classification of the goods ordered by the Excise authorities having jurisdiction over the manufacturers of the goods at Madras, Nasik and Rajkot. It is this order which is challenged in the present appeal.

2. We have heard Shri Balbir Singh, Sr. D.R., for the appellant-Collector and Shri V. Lakshmi Kumaran, Advocate, for the respondents and have perused the record.

3. It is contended by the department that the Excise authorities at Jamshedpur were competent to change the classification of the goods which had been adopted by the . Excise authorities having jurisdiction over the factories of production and, at any rate, the Jamshedpur authorities had jurisdiction to direct the respondents that they should not avail themselves of the facility Under Rule 192 (falling within Chapter X of the Rules) inasmuch as the goods fell under Item No. 52 of the CET and there was no provision under which the movement of such goods Under Rule 192 was permissible.

4. Shri Lakshmi Kumaran, on the other hand, contends that the Jamshedpur authorities had no jurisdiction to change the classification of the goods and, consequently, order withdrawal of the Chapter X facility from the respondents.

5. We have carefully considered the submissions of both sides. We cannot accept the contention that the Central Excise authorities at Jamshedpur had jurisdiction to change the classification of the goods in dispute ordered by the authorities at Madras, Nasik and Rajkot, even if they felt that the classification ordered by the latter was incorrect. Rule 173B (2) provides that the proper officer shall, after such inquiry as he deems fit, approve the classification list submitted by the assessee with such modifications as are considered necessary and the assessee shall, unless directed by the Proper Officer, determine the duty payable on the goods intended to be removed in accordance with the list. "Proper Officer" has been defined in Rule 2(xi) as the officer in whose jurisdiction the premises of the producer of any excisable goods, or any person engaged in any process of

production of such goods as a manufacturer, are situate. It is clear, therefore, that the Excise authorities at Jamshedpur had no jurisdiction to revise or change the classification approved by the "Proper Officer" having jurisdiction over the factories of production in Madras, Nasik and Rajkot. Support for this view can be further had from the decision of this Tribunal in Jay Industries, Hyderabad v. Collector of Central Excise, Hyderabad, 1984. (16) ELT 462, in which it was held that the Central Excise authorities at Hyderabad had no jurisdiction to reopen the assessment done by the Bombay Customs authorities and to declare, as it were, that the goods (in that case) did not attract countervailing duty as resins, although the Bombay Customs authorities had assessed the goods in dispute to countervailing duty as resins.

6. Following the above discussion, we further hold that the direction to the respondents withdrawing the facility Under Rule 192 was also not in order.

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