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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-15-1988

Reported in : (1989)(39)ELT664TriDel

Appellant : Collector of C. Ex.

Respondent : Heavy Engineering Corporation

Judgement :
1. This appeal impugns the order appeal passed by the Collector of Central Excise (Appeals) Calcutta, No. 75/BR/84 dated 7.3.1984 in respect of M/s. Heavy Engineering Corporation Ltd. By this order the Col lector (Appeals) directed to refund to be given, because he held that the castings which had been assessed as finished machine parts under Item 68 of the Central Excise Tariff as not qualifying for such assessment. He held that so long as the castings requite further operation for fitment into the machinery to which it is intended to be fitted, they do not qualify for assessment under Item 68.

2. The learned counsel for the department, Mr. Rajhans referred to order No. 192/86-B1. In the present dispute the goods are shaft rollers, shaft couplings and pistons. He read the orders of the Assistant Collector and the show cause notice and said that the goods were identifiable machine parts. These goods received further machining but this further machining is done in the same factory. These assessees also make machine parts for their own machines. In their ropy of the work sheet they have shown the parts as machine parts.

3. The learned counsel for Heavy Engineering Corporation, however, said that the dispute is not in respect of finished machine parts they use in their own factory, but is in respect of castings sold outside, as castings; they cleared only castings. He quoted 1983 (12) ELT17 (Pat.).

They paid the duty under protest. They made a full statement of the facts in their appeal to the Collector (Appeals) and the counsel read these. The counsel also read the Collector's order referring to the inspector's report that the castings had not yet reached the final stage of fitment. He said this is the truth of the matter and the department cannot contradict this now.

4. The learned counsel for the department, however, said that there is nothing on record to show that duty had been paid under protest as claimed by the learned counsel for M/s. Heavy Engineering Corporation.

5. The facts can be found in the order of the Assistant Collector, Ranchi, No. 26/82 dated 22.9.1983 which was appealed and which formed the subject of the impugned order of the Collector (Appeals). The Assistant Collector said that when the refund claim was received, it was sent to the Superintendent of Central Excise, Dhurwa for verification. In his verification, the Superintendent intimated that the subject goods for which refund has been made and which are claimed to be rough machined or proof machined articles were nothing but identifiable machine parts and this was corroborated from the description given in the gate passes. In reply to the show cause notice issued thereafter, the assessees said that they had made the refund claim only in respect of proof machined/rough machined castings, and not in respect of goods which had been finally machined.

6. Work orders were produced to the Assistant Collector, and he records that he had examined a few of them and that from the examination of these work orders, he saw that the goods were made on the specific order from the buyer who had given drawing and other specification regarding the goods, mentioning the goods as roller shaft, coupling and pistons. The work order also contained a direction about how machining should be carried out i.e. whether proof machining or rough machining was required.

7. An inspector was also deputed to verify the relevant works order, and he reported that the description of the goods as per works order was identifiable machine parts such as roller shaft, pistons, couplings, though only proof machining or rough machining were carried out.

8. In his adjudication, the Assistant Collector based his order on a decision by the Collector (Appeals), Calcutta, No. 410/1980 dated 29.11.1980 by which an appeal was rejected, because the Collector (Appeals) held : "whether the castings are rough machined or completely finished for immediate fitment to the machine is immaterial. The moment the castings are identifiable as intended to be used in certain machinery, they are correctly identifiable under Item 68. They assume special which is quite distinct from other castings". This evidently is the basis for the Assistant Collector's order. But the finding of the Collector (Appeals) in his order dated 29.11.1980 quoted by the Assistant Collector is incorrect. In his conclusion he said that the castings were clearly identifiable as machine parts "even right from the time the castings are made". This statement is true but it cannot form the reason for assessing the castings as machine parts. All machine parts when they are cast are identifiable as that part : a wheel or a shaft can be easily distinguished in contour as soon as they are taken out of the mould as a casting for a wheel or a shaft. But it is not correct that wheel castings or shaft castings are wheels or shafts; very far from it. They are castings and will continue to be castings until they are machined and finished and are ready to be fitted as wheels or shafts. The Collector (Appeals) in fact said that it was immaterial whether the castings are rough machined or completely finished, but that if they are recognisable, they would have to be assessed under Item 68.1 must totally disagree with this, because then nothing can be assessed as castings; they will all be assessed as machine parts. If by identifiable machine parts the department means that the shape of a wheel or a crankshaft can be discovered in the casting, it is true enough. But if they mean that it is a wheel or a crankshaft, it is a complete fallacy and I cannot accept this proposition. A wheel casting is not a wheel and may not be assessed as a wheel.

9. The Assistant Collector says that the documents described the goods as identifiable machine parts. I cannot imagine how anybody will describe anything as

an identifiable machine part. Such descriptions are unknown in industry, in metallurgy or in trade. The only descriptions that are correct and accepted are castings of crankshaft or wheels, or rough machine castings and so on and so forth; but identifiable machine parts is as incongruous as it is imprecise.

10. We have seen that the Assistant Collector depended on the Collector (Appeals)'s order which held that it was immaterial whether the goods are rough machined or completely finished and that the castings were clearly identifiable as machine parts even at the time they are made as castings. This is not enough for founding a decision that the castings are machine parts and for assessing them under Item 68.1 accordingly direct assessment of the goods as castings. Assessment under Item 68 is not correct and the department shall not proceed to do so.

11. Since the department assessed the rough machined parts as finished machine parts under Item 68, the learned counsel for the department was asked if they had assessed the castings as castings. The learned counsel said he did not have any information on this. We would have appreciated if the appellant collectorate had made this information available, as we would have liked to understand the problem fully. We have been given only partial information on the dispute and our understanding of the matter is, therefore, necessarily only partial and incomplete.