Collector of Central Excise Vs. Guru Rajindra Rolling Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-11-1988

Reported in : (1988)(37)ELT439TriDel

Appellant : Collector of Central Excise

Respondent : Guru Rajindra Rolling Mills

Judgement :
1. We have here in these appeals before us a dispute whether a product produced by the assessees is a strip or not The Appellate Collector In different orders held that the products were not strips and they should be assessed under 26AA (ia) before 1.8.1983 and under Tariff Item 25(8) after 1.8.1983. The problem for us is compounded by the fact that the Assistant Collector whose orders were impugned before the Appellate Collector sometimes assessed them under Item 26AA(ii) and sometimes under 26AA(iii), and Item 25(12)(1)(9) and (1)(c) or 25(13)(iii)(a) and (b), of the 1.8.1983 tariff. In one order in original, the Assistant Collector said the assessment would be according to its width, but he does not say what the width Is. Item 25(12) covers hoops and strips while 25(13) covers coils for reroling, sheets, plates etc. This is a clear recognition that some of these goods were not strips, but might acquire categorization as plates, sheets and so on. Sub Item (it) covers plates and sheets and hoops while sub-item (Hi) covers flat scraps and strips. It is obvious that the Assistant Collectors were not certain about the assessment of the goods because they cannot be both plates and strips or scraps.

2. There was a great deal of discussion and argument by the two learned sides before us. The learned counsel for the department concentrated on attacking the Appellate Collector's order rejecting the assessment of the Assistant Collector and directing the assessment as goods other than strips either under Tariff Item 26AA(ia) or under Tariff Item 25(8). We will gain nothing by reproducing the arguments of the two counsels; only the basic points and facts that are truly relevant to form an opinion the nature of the goods and what their assessment should be will be discussed. For example, while the assessees' counsel emphasised that the mills had no strip mill but only bar mills, the learned counsel for the department said that it made no difference how or where the strips were produced. As long as they conform to the dimension of a strip they should be assessed as strips. In his arguments, the learned SDR pointed out that definitions have been given in the tariff item for iron steel products from 1.8.1983 and that these definitions were used to arrive at a proper understanding of the goods.

The opposing counsel agreed that the definitions given in the tariff when they appeared on 1.8.1983 serve as goods reference points. Absence of definition, said the learned counsel, more often leads to confusion and failure of appreciation, and he was therefore all in favour of definition as it provides definitive tests and yardsticks.

3. The learned SDR said that a strip should have an approximate rectangular cross-section; it is not necessary that the dimensions of the cross-section should be exact Variation can arise since a product that is rolled in a mill is not given exact finish, and slight imperfection or deviation will not detract from an approximate rectangular cross-section. It was not necessary, said the learned counsel, that a strip should be made only in a strip mill. Wherever it may be rolled, if It answers the definition of a strip, it ought to be classified as a strip. It is not even necessary for the edges to be rolled or to be sheared. A product with unrolled or unsheared edges can still conform to the dimensions of a strip. A mill edge results from the practice of rolling, and without the use of edgerolls. He read the definition of edging in the Indian Standard as the application of rolls to the edges of a flat product like a plate or a strip with the object of controlling the width, and giving a smooth edge of desired contour during the rolling process. The orders

in appeal shows that the goods are not rectangular; but they can be approximations. In answer to our question the learned SDR said that the goods are sold to makers of utensils and are used for making steel utensils.

4. He accepted that the thickness was not even, but this, he said, did not matter to the customer since he uses it for utensils. The assessees have described the goods as strip at one time when they claimed proforma credit though the goods are straight lengths. He said the definition speaks of straight length and coils can be in the straight form. Heading 73.12 of the CCCN speaks of straight strips and flattened coils. The Encyclopaedia of Metallurgy on strip also speaks of them as being often coiled, obviously they are sometimes uncoiled.

5. The learned counsel for the assessees laid great weight on the fact that the goods were not produced in strip mills and that the manufacturers did not have strip mills. Strip mills are very costly and require machinery costing crores of rupees. Furthermore, the value of the goods they produce is around Rs. 25,000/- a tonne whereas strips sell for anything between Rs. 60,000/- to Rs. 70,000/- per tonne. Their goods are used in utensils making, an activity that require not any mechanical skill as the people who make them used only rudimentory tools for their work. Strips on the other hand go into manufacturing like tin plates, tubes, tools, saw blades machinery belting. Their goods come as flat product of uneven thickness and shape. They are never manufactured in coils, nor they cannot even be described as flattened coils.

6. The two learned counsels between them quoted in support of their respective cases several judgments and decisions, but I am afraid we do not need them as they have no relevance or direct application on which we can draw for our present labours. There have been judgments here or there to the effect that a strip must be made in a strip mill and the learned counsel for the assessees stated that the Board itself had issued instructions and rulings that only strip mills can manufacture strips, or rather that a product to be classified a strip must come out of a strip mill.

7. A few facts on the goods will clear up the picture. When we asked the learned SDR what the length of the products was, he answered that it was 4' to 6'; the

learned opposing counsel agreed that this was the length. The SDR also told us that the thickness was around 1.6 mm. But when we wanted to know the width of the products, the learned SDR said he did not know nor was the information available In his papers.

Unfortunately, the opposing counsel too did not have this information.

We thus lack a very important piece of intelligence.

8. As the two learned counsels agree that the definitions cannot be discarded, we will look at a few. In Item 25 effective from 1.8.1983, it was: "Strips means hot or cold-rolled products, rolled approximately in rectangular cross-section of thickness usually 10mm and below with mill, rolled trimmed or sheared edges and supplied in coil or flattened coil (straight length) form but excludes hoop and skelp." 9. These goods are not in coil as accepted by all; nor are they flattened coil. The department, however, claimed that they are in straight length. Their interpretation seems to be that a straight flat product is enough for the definition; but this is not a correct understanding. The straight length describes a flattened coil, and Is not an independent characteristic by itself of the product. The straight length must result from a flattening of a coil because it is a length that emerges in straight form from a flattened coil. That is, it must be a flattened coil form even though in straight length. There is a world of difference between a flat straight form, and a straight length of a flattened coil. We have heard the arguments of the learned counsel for the assessees that the goods were rolled out straight and flat in length of around 6' or less and never in coils. We have seen and heard no evidence that they were straight length of flattened coil and I am certain that there can be no such evidence, given the type of mills used to roll out the product and given the fact that they come out in shapes about which I shall demonstrate more a little later.

There is nothing to be said for the department's case that these are strips.

10. Let us see what the CCCN has for us. This authoritative nomenclature describe Hoops and Strips as: "Rolled products with sheared or unsheared edges, of rectangular section, of thickness not exceeding 6 mm, of a width not exceeding 500 mm and of such dimensions that the thickness does not exceed one tenth of

the width, in straight strips, coils or flattened coils." The cross-section of these products are not rectangular as pointed out by the learned counsel for the assessees. At best, they are only approximately rectangular, according to the learned SDR. They are not in coils or flattened coils; but are claimed by the department to be straight strips. Unfortunately, we do not know their width as neither party in the list knew this vital fact and the lower authorities never looked into it nor recorded it. Consequently, we do not know whether the thickness exceeds one tenth of the width or not. We cannot apply this definition to call the goods strips.

11. We will next take the definition of Harmonised Central Excise Tariff. This tariff defines steel strips as: "Hot or cold-rolled products, rolled approximately in rectangular cross-section of thickness usually 10mm and below, with milled rolled, trimmed or sheared edges and supplied in coil or flattened coil (straight length) form but excludes hoops and skelps." 12. We know that the goods do not have mill rolled, trimmed or sheared edges and that they are not in coil or flattened coil form. They are just flat rolled products varying in length from 4' to 6' and about 1.5 mm thick. And even though this definition makes no mention of the width, we feel handicapped for want of this information since the relation of the width to the length can make all the difference in judging a steel product. As a rule, we understand a strip as a product whose length is greatly in excess of its width, great enough for the product to be sold and supplied in coil form.

"A hot or cold-rolled flat product and rolled approximately in rectangular cross-section of thickness usually 10 mm and below with mill, rolled, trimmed or sheared edges and supplied in coil or flattened coil (straight length) form. Usually an arbitrary width is chosen to demarcate between narrow and wide strip. The width chosen for such demarcation varies from country to country." 14. We have already noted how the products in dispute were not in coil or flattened coil straight length form. As for the width, we do not have even an arbitrary one as nobody was able to tell us that it was.

The product will not qualify as a strip in this definition.

15. A look at the product will do a deal of good; here are pictures taken from photographs produced to the bench by the department.

I have seen strips before; but I have never seen products that look less like strips than these. They appear to be more like thin sheets.

The products at (A) and (B) look just like plates or sheets of iron steel but even their plane is not rectangular. It is possible that this product after slitting might turn into strips, as slitting is one of the several methods used for producing strips. But we have not been told that this process was adopted. The products at (C) and (D) are cold rolled; their plane area is in an arc, the right end narrower than the left end. This certainly could be anything but not a strip. This product also with slitting could become a strip, but we do not hear of such a process.

16. I am not able to give a ruling to the effect that the goods are strips. There an just not enough materials for doing so; on the contrary, the material I have seen suggest strongly that the products may not qualify as strip. And our ignorance of the width leaves nagging doubts in my mind that hold me back from such a ruling. These doubts are not a little heightened by an Assistant Collector who speaks of widths without recording how wide the goods are, and who assesses the products as plates, sheets, strips, coil for recoiling, but who avoids defining the products as plates or strips, merely writing down the item or sub-item number, little realizing the pitfalls of this short cut. I can see but one way in this uncertainty and that is to ask the Assistant Collector to readjudicate.

17. Both he, and Collector Appeals if an appeal should reach him, must supply full technical and physical details of a goods, their measurement dimensions and so on, the use to which the goods are put, and other relevant materials. I order accordingly and in order to enable this to be done I set aside the orders of the two lower authorities.