

S.A.E. (India) Ltd. Vs. Collector of Central Excise

S.A.E. (India) Ltd. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/4368

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-13-1988

Reported in : (1988)(17)LC511Tri(Delhi)

Judge : S T H.R., G Agarwal

Appellant : S.A.E. (India) Ltd.

Respondent : Collector of Central Excise

Advocate for Pet/Ap. : Shri. Satyasheel

Judgement :

1. Out of the six appeals in hand, five appeals relate to classification of the goods and one appeal relates to the rejection of refund claims lodged by the appellants.
2. Factual backdrop: It is the case of the appellants that they accept on contract basis from the State Electricity Boards, in the country to install Electric Power Transmission Towers made of Steel for public distribution of Electric Power. For this purpose, they received from the Steel Authority of India Ltd., Tata Iron & Steel Co. Ltd., and Indian Iron & Steel Co. Ltd., duty paid steel angles falling under Tariff Item 26AA of the C.F.T. in their factory, cut them to size, punched and galvanised them and cleared them from the factory, and after clearance from the factory these steel angles were used in the construction of steel Power Transmission Towers of the State Electricity Boards, Government Body's like National Thermal Power Corporation Ltd. and National Hydro Electric Power Corporation Ltd. They

submitted their five classification lists contending that since the steel angles had already paid duty under T.I. 26AA, and mere cutting, punching, and galvanising the cut-to-size angles did not amount to manufacture resulting into the emergence of a new product, they did not attract T.I. 68. However, the Assistant Collector of Central Excise, Jabalpur rejected their plea and classified the said goods under T.I. 68 charging duty thereon prescribed under this heading vide his five separate Orders-in-original of various dates. It appears that the appellants also filed their seven refund claims totally amounting to Rs. 9,71,953 26, inter alia stating that: for the reasons mentioned in the classification lists no central excise duty under T.I. 68 was attracted as they had already paid duty under T.I. 26AA, but due to mistake they had wrongly debited in PLA the duty on the said duty paid items. All the refund claims were taken up together and ultimately rejected by the Assistant Collector of Central Excise, Jabalpur vide his Order dated 25.5.1981 holding that duty was correctly payable on the said items. Against the said six orders of the Assistant Collector of Central Excise, Jabalpur, the appellants filed their six separate appeals before the Collector of Central Excise (Appeals), New Delhi, who vide his two Orders-in-Appeal (which are impugned herein) rejected all the said six appeals filed by the appellants. Hence the present appeals.

3. Shri Satyasheel, learned Counsel for the appellants submitted that in all the six appeals, issue involved is identical and stands decided in favour of the appellants by this Tribunal, as would appear from the decisions rendered in--(1) Collector of Central Excise, Baroda v. M/s.

Dodsall Pvt. Ltd. 1987 (11) ECR 692, (2) Arm Industries, Visakhapatnam v. Collector of Central Excise 1986 (8) ECR 166, (3) R.S. Steel Works, Gaziabad v. Collector of Central Excise, Meerut, Order No. 395/86-B1 dated 1.7.1986. In reply Shri J.N. Nigam, learned SDR for the respondent, while supporting the impugned orders submitted that the activities of the appellants such as cutting, punching, galvanising etc. of the steel angles amounts to manufacture and cited the following cases--Brakes India Ltd. v. Supdt. of Central Excise, Madras 1980 ELT 775 : (Madras) 1981 ECR 10D, (2) Structurals and Machineries v. Collector of Central Excise, (3) Metal Forgings Pvt.

Ltd, v. Union of India , Delhi.

4. We have considered the arguments and find that the issue involved in the instant appeals is fully covered by the series of decisions of this Tribunal. In the case of Collector of Central Excise, Baroda v. M/s.

Dodsal Pvt. Ltd., supra the following issue was involved (which is identical to the issue involved in the instant appeals): (i) Whether the iron & steel angles, plates, channels and rods supplied by the Gujarat Electricity Board which were cut into pieces, bent and punched according to the orders galvanised and returned to the suppliers and the erection of the transmission tower would be liable to Central Excise Duty under Item 68 of the Central Excise Tariff? And after considering the various authorities on the point this Tribunal concluded as follows: 20. We are, therefore, unable to accept the contentions of the Revenue that there has been a manufacture of excisable goods; the several members continued to be within Item 26AA and if there is no transformation into a different commodity, the recourse to Item 68 would not be justified....Structurals and Machineries v. Collector of Central Excise, supra cited by the learned SDR was also noticed.

Likewise the case of Metal Forgings Pvt. Ltd. v. Union of India 1985 ECR 1337-- a case decided by the Single Judge of the Hon'ble Delhi High Court was also noticed. It appears that against the said judgment of the learned Single Judge, Metal Forgings Pvt. Ltd., filed their Letters Patent Appeal before the Hon'ble Delhi High Court which was dismissed by the Division Bench which was --cited by R.S. Steel Works, Gaziabad v. Collector of Central Excise, Meerut, supra where the issue involved herein was identical to the issue involved in the instant appeals. In that case the judgment of Hon'ble Madras High Court rendered in the case of Brakes India Ltd. v. Supdt. of Central Excise, 5. In view of the above we hold that the activity carried out by the appellants would not come within the purview of the "Manufacture" and the transmission towers which were erected at the site from the structural material would be permanent structure and would not admit the definition and description of the goods and consequently we hold that the angles in question would be classifiable under T.I. 26AA. We order accordingly and allow all the five appeals which relate to the classification.

6. Since we have held that the angles in question are classifiable under T.I. 26A/V and it is admitted to both the parties that duty under item 26AA has already been paid, we allow the other appeal relating to the refund claims with consequential relief.

7. Before we close it is to be stated that the department has also filed the cross objections which are nothing but in the nature of replies to the grounds taken in the memo of appeals. Hence no separate order is required to be passed and these cross objections shall be deemed to have been disposed of by this order also.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com