

Talbro's Automotive Components Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-26-1988

Reported in : (1988)(19)LC224Tri(Delhi)

Appellant : Talbro's Automotive Components

Respondent : Collector of C. Ex.

Judgement :

1. In this matter appellants have been held in the order-in-original to have "cleared dies and tools falling under Central Excise Tariff Item 51 -A of the value of Rs. 5,80,385.87 without payment of appropriate duty and without a Central Excise Licence and without observing any other provisions of Central Excise Law. It is also held that despite an intimation from the Range Superintendent of Central Excise, Appellants had failed to comply with the statutory requirements of recording production and removal of the goods. Accordingly, duty amounting to Rs. 91,406.53 has been demanded and penalty of Rs. 20,000/- has been imposed on the appellants.

2. None appears on behalf of the appellants who have requested to be excused from personal hearing and prayed that their appeal may be decided on the basis of merits and as per records.

3. Shri L.C. Chakrabarti, JDR has argued on behalf of the Department, The learned Departmental Representative has reiterated the view taken in the order-in-original.

4. We have carefully considered the facts of the case and the submissions made before us, both, written and oral. For the sake of convenience, Tariff Item 51A is reproduced below: (i) Hand tools, the following Pliers (including cutting pliers) Spanners, wrenches, files and rasps, screw drivers (including ratchet types); (ii) Tools for working in the hand, pneumatic or with self-contained nonelectric or electric motor; (iii) Tools designed to be fitted into hand tools, machine tools or tools falling under Sub-item (ii), including dies for wire drawing, extrusion dies for metals and rock drilling bits; 5. It would be observed that only specified tools are covered by this Tariff Entry. It is not the department's case that the goods in question fall under Sub-items (i), (ii) or (iv) of Tariff Item 51 A. The question then arises, what is the evidence with the department to prove that the impugned goods are tools designed to be fitted into hand tools, machine tools or tools, falling under-sub item (ii) i.e. tools for working in the hand, pneumatic or with self contained non-electric or electric motor. We do not find any material to support the classification under Tariff Item 51A (iii) in the Show Cause Notice.

There is of course a discussion in the order of the Additional Collector. His observations in this regard are interesting and are re-produced below :- "Judging from the nature of the operations that these dies and tools are performing and in consideration of the facts that the said operations like forming, blanking are basically common place operations which are performed by machine tools on surfaces such as metal, wood, leather, asbestos sheets etc. the dies and tools in question used in the manufacture of gaskets are in no way different from the tools used in a machine tool. The fact that these are specially designed and may be used only in specific applications is not relevant to the issue...." 6. These findings leave the main question to be decided un-answered and unsupported by any evidence whatsoever, and this question is - are these tools designed to be fitted into hand tools, machine tools or tools for working in hand? 7. The appellants contend that the impugned products are simply profiles of metals for blanking asbestos jointings, millboards or metal sheets. They have referred to the Chambers dictionary which defines the profile as "an outline: the side face: the outline of any object without fore-shortening: (and mechanically) to give a definite form by chiselling, machining etc." They do not go on to explain as to how the profile is actually operated. However, we do not find that there is any denial by the

department that they are not fitted into hand-tools or machine tools or tools for working in hand, as submitted by the appellants. Collector of Central Excise, Calcutta v. Bata (India) Limited -1987 (32) ELT 89, this Tribunal considered classification of goods which were described by the respondents in that case as "cutting dies and cutting discs". The department had taken a stand that the goods were classifiable under Central Excise Tariff Item 51A (iv), as the goods were not merely dies but industrial knives and blades, inasmuch as they cut leather or rubber sheets to a pre-determined size.

It was also mentioned that they trimmed the surface of the metal while cutting. Of course, the respondents had denied that any trimming was done by the products in question, but it was conceded that the products formed the job of cutting. The Tribunal observed that the products were so fabricated that by placing the same on the leather or rubber sheets to be processed, and applying pressure, the leather or rubber sheets were cut into required shape, and the product was then moved manually, until the entire sheet was used up for cutting therefrom the pieces of required shape. As in this case, the respondents claimed that the impugned goods were not fitted to any tools and that their movement was manual. The Tribunal considered the decision in the case of . Die Metal Bearing Ltd. E.A. No. 380/82-D in which the dies for cutting out of sheets of metal into a particular shape were held to be classifiable under Tariff Item 51 A(iii)-CET but that was for the reason that the die was to be fitted to a machine tool for being operated for cutting metal to a pre-determined shape. In the case of Bata (India) on the other hand, the Tribunal held that the movements of the die over the leather or rubber sheets, was to be done manually, therefore the products would not fall for classification either under Item 51-A(iv) or 51-A(iii).

9. The learned JDR fairly concedes that there is nothing on record to support the classification of goods under Tariff Item 51 -A(iii) and recommends that the matter may be remanded for de novo consideration and adjudication by the Additional Collector. We feel, however, that when both in the show cause notice and the final order passed on the adjudication of the matter, no evidence is forthcoming to support the allegation made, then there is hardly any case for remand of the matter. We, therefore, set aside the classification of the goods under Tariff Item 51

-A(iii).

10. In consequence, the goods in question would fall for classification under Central Excise Tariff Item 68.

11. Appellants have claimed the benefit of exemption of duty under Notification No. 118/75-C.E., dated 30.4.75 on the ground that their goods are used for captive consumption. This notification, however, is a conditional notification in so far as it relates to use of the goods in a factory of the manufacturer which is different from his factory where the goods have been manufactured. In such cases, the exemption is allowable on the proper officer being satisfied that the goods are intended for such use. On this aspect there is no clear finding in the orders of the lower authority and this aspect has to be remanded for de novo consideration and decision after due satisfaction in regard to the facts of the case. The demand for duty is, therefore, set aside and this aspect is remanded to the Additional Collector for re-adjudication.

12. Coming now to the penalty imposed, we find that under Rule 174-A there is an exemption from the operation of Rule 174 in respect of goods which are exempt from the whole of the duty of excise leviable thereon unconditionally. Since appellants claimed an exemption which is of a conditional nature, they were required to take out Central Excise Licence. They have, therefore, acted in violation of Rule 174 of Central Excise Tariff Rule.

13. The question, however, arises whether this violation of Rule 174 merits imposition of penalty of Rs. 20,000/-. It is observed that appellants received a letter from the Excise Authority on 22nd July, 1977 stating that they were required to take out a licence. This remained the position in November, 1981 when the Excise Authorities took up the matter again with the appellant. Quite obviously, therefore, the facts would appear to be firstly, that the department was fully aware of the fact of production of the impugned goods by the appellant company, secondly that the department apparently considered the goods to be exempted from duty and, therefore, did not press the assessee to pay duty or to comply with any procedures and, thirdly that the department itself was not clear for more than four years whether the appellant company was required to take out a Central

Excise Licence. It was, therefore, that the department did not take any action in the matter.

14. In the circumstances, we are not convinced that there was any intention on the part of the appellant company to evade duty. Nor was there any deliberate intent to violate any other requirements of Central Excise procedures or Rules. Imposition of penalty therefore is not merited and is set aside.

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