

Precision Fastners Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-27-1988

Reported in : (1989)(19)ECC58

Judge : V Raghavachari, K P Anand, D Mandal

Appellant : Precision Fastners Ltd.

Respondent : Collector of Central Excise

Judgement :

1. Brief facts of the case are that the appellants filed 4 classification lists, viz., (i) No. 6 dated 22-6-1978 for stud hub and wheel (front and rear), (ii) No. 10 dated 3-8-1978 for cylinder head bolt and main bearing bolt, (iii) No. 12 dated 13-11-1978 for cylinder head bolt/stud and (iv) No. 13 dated 13-11-1978 for track Bolt, track nut, track shoe bolt and nut. The appellants claimed classification of the goods under tariff item 34-A of the C.E. Tariff read with notification No. 99/71-CE dated 29-5-1971. The Assistant Collector of Central Excise of erstwhile Thane DN. II, vide his order-in-original dated 20-2-1980 held that as the products bore numbers specified against drawings, it could not be said that those had use other than for motor vehicles. He approved the classification of the products under tariff item 34A read with exemption notification No. 99/71-CE for the period prior to 10-6-1979 and under T.I. 68 from 10-5-1979. The Collector of Central Excise, Bombay-II reviewed the said order of the Assistant Collector under Section 35A as then existed, and after issuing necessary show cause notice and giving personal hearing, held that tariff item 52 of the of Central Excise Tariff covered all types of

bolts, nuts and screws and the tariff item did not differentiate between the bolts, nuts and screws required for one specific industry or mechanism and another industry or mechanism. He observed that by issue of notification No. 83/75-CE dated 29-3-1975, the Central Government had exempted bolts, nuts and screws falling under item 52 of Central Excise Tariff and manufactured by Hindustan Aeronautics Ltd. and used within their unit for the manufacture of aircrafts or as spare parts of air-crafts from the whole of the duty of excise, and this in turn made it clear that the bolts, nuts and screws even if used as such or as spare parts of a specific mechanism or for a specific engine of aircraft were still covered by item 52 of the Tariff. He also observed that according to the decision of Supreme Court in the case of *Dunlop India Ltd. v. Union of India* suitability or end use of a product would be irrelevant for its classification under a particular tariff entry unless that entry itself made a reference to use or adaptation of that article. He, therefore, set aside the order of the Assistant Collector and directed that the goods be classified as indicated by him and duty charged accordingly. The present appeal is against that order-in-review of the Collector.

2. The contentions of the appellants are that the products in question are motor vehicle parts, specially designed and having special functional utility as motor vehicle parts, and are not merely used as fasteners. In commercial parlance these are not regarded as hardware products, but as motor vehicle parts. These goods are available in the shops dealing in motor vehicle parts and not in the shops of hardware goods. According to them, the products should be classifiable under tariff item 34-A read with notification No. 99/71-CE dated 29-5-1971 upto 9-5-1979 and under item 68 from 10-5-1979. They have relied on the opinion given by Victoria Jubilee Technical Institute, Bombay, trade notices issued by the Department and the Government of India's order-in-revision No. 841 of 1973 in the case of *Gurmukh Singh & Sons* in support of their contention. At the time of hearing before us, the Senior Departmental Representative has drawn our attention to this Tribunal's decision reported in 1983 ELT 2067 in the case of *Sri Ram Das Motor Transport Ltd., Kakinada v. Collector of Central Excise, Madras* 3. We have considered the records of the case and the arguments of both sides. For better appreciation of the issue involved in the matter, we consider it necessary to reproduce the disputed tariff items, prevailing during the relevant period. Tariff item

52 reads as follows: Bolts and nuts, threaded or tapped and screws, of base metal or alloys thereof, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.

Explanation: The expression 'bolts & nuts threaded or tapped, and screws' used in this item shall include bolt ends, screw studs, screw studding, self-tapped screws, screw hooks and screw rings.

34-A. Parts and accessories not elsewhere specified, of motor vehicles and tractors including trailers.

However, during that period, by virtue of exemption notification No.99/71-CE dated 29-5-1971, all goods classifiable under this tariff item, except those listed in that notification, were exempted from the whole of the central excise duty. The goods included in the 4 classification lists which are under dispute, were not included in the said notification. The appellants have claimed that by virtue of this notification their products were exempted from duty as the same were classifiable under item 34-A of the Tariff. This tariff item was amended by the Finance Bill, 1979, which became an Act of Parliament on 10-5-1979. The amended tariff item which came into force with effect from 10-5-1979 reads as follows:-- 34-A. Parts and accessories of motor vehicles and tractors, including trailers, the following, namely:-- Explanation I: The expression 'motor vehicles' has the meaning assigned to it in Item No. 34.

Explanation II: The expression 'tractors' shall include agricultural tractors.

The disputed products do not find mention in the list of goods given in the amended tariff item 34-A. The appellants' claim is that as the disputed goods are not mentioned in the amended tariff item 34-A, they are classifiable under item 68 with effect from 10-5-1979.

4. The goods covered by 4 classification in lists in dispute were as follows:-- (i) Classification list No. 6 dated 2-6-1978:--Stud hub and wheel (Front and Rear).

(ii) Classification list No. 10 dated 3-8-1978:--Cylinder head bolt and main bearing bolt.

(iii) Classification list No. 12 dated 13-11-1978:--Cylinder head bolt, stud.

(iv) Classification list No. 13 dated 13-11-1978:--Track shoe bolt/nut, track bolt/nut.

In the appeal memorandum No. CEX/Appeal/Accts/2263/79-84 dated 3-8-1979 filed before the Appellate Collector of Central Excise, Bombay, the appellants described the goods covered by classification list No. 6 dated 22-6-1978 as "wheel bolts" vide page 33 of the paper book submitted by appellant's Counsel M/s. Matubhai Jamietram & Madhan with their letter dated 22-8-1983. Bolts and nuts are specifically mentioned in item 52 of the Central Excise Tariff. Explanation below this tariff item says that the expression "bolts and nuts threaded and tapped and screws" used in this tariff item shall include inter alia screw studs.

In Chambers Dictionary of science and Technology, revised edition-1982, "stud" has been described as (a) A shank, or headless bolt generally screwed from both ends and plain in the middle. It is permanently screwed into one piece, to which another is then secured by a nut.

Bolt is a specified article in the item 52. Stud is a headless bolt.

Appellants have said it is wheel bolt. It falls under item 52. Thus all the articles as per the 4 classification lists are covered by the description of tariff item No. 52.

5. We shall now deal with the contentions of the appellants. It was held by the Supreme Court in the case of Dunlop India Limited v. Union of India AIR 1977 SC 597 that end use of an article is not relevant where a tariff entry does not contain a reference to the use or adaptation of the article. Secondly, for the purpose of classification, a specific item will have preference over an item having general description. Tariff item 34-A, as it stood prior to 10-5-1979, provided a general description "parts and accessories of motor vehicles not otherwise specified." With effect from 10-5-1979 the appellants' claim is for classification under item 68, which is a residuary item. On the other hand, tariff item 52 is a specific tariff entry, providing for classification of bolts and nuts. On functional basis, the appellants have claimed classification of their products under a tariff item providing for general description and then under a residuary item, namely, items 34-A and 68

respectively. These two tariff items can not have preference over the specific entry 52. In case of Atul Glass Industries Ltd. and Ors. v. Collector of Central Excise, and Ors., , the Hon'ble Supreme Court held that a special entry must exclude a general entry. In the said case, Supreme Court held that glass screens fitted in motor vehicles as wind screens, rear screen and door screens would be classifiable under item 34-A prior to the amendment of this tariff item by the Finance Act, 1979 and under item 68 after the amendment, and not under item 23-A (4) as "glass and glassware". After the wind screens were manufactured out of glass sheets they became a completely different product, part of motor vehicle and they ceased to be mere glass sheets. The cases for bolts and nuts stand on a different footing. They remain bolts and nuts whether they are used in motor vehicles or in any other machines. These are used for the purpose of fastening. The same bolts and nuts cannot be differently classified depending upon their use.

6. In view of the Supreme Court decision in Dunlop India's case (supra), classification based on end use is ruled out. The description of the T.I. 52 is very clear and unambiguous, and the goods in this case clearly fit in the description of this tariff item. The appellants have claimed that in commercial parlance the goods are treated as motor vehicle parts. This understanding is based on end use and hence it cannot determine the classification. The argument that the goods are ordinarily available in shops dealing in motor vehicle parts and not in hardware shops will make no difference as held by Bombay High Court in the case of Simmonds Marshal Ltd v. M. R. Baralikar, Assistant Collector of Central Excise, Pune and Ors. .

7. Similar issue was examined by this Tribunal earlier in the following cases:-- Ramdas Motor Transport Ltd. v. Collector of Central Excise, Madras Fit Tight Nuts and Bolts Ltd. v. Collector of Central Excise, Rajkot Collector of Central Excise, Chandigarh v. Purewal & Associates Ltd. Collector of Central Excise Madras v. Sundaram Fasteners Ltd. Padi, Madras Kwality Sales Corporation, Ludhiana v. Collector of Central Excise, Chandigarh In all these cases the contentions of the appellants were that the goods were parts of motor vehicles, they were used as general type fasteners but were manufactured as per specifications for use as motor vehicle parts and had specific functional utility as motor vehicle parts, and

the goods were not available in the hardware shops but were sold in the shops dealing in motor vehicle parts. In all the five cases, Tribunal, rejected the contentions of the appellants and held that for classification of the goods end use was irrelevant where there was no reference of end use in the Tariff item itself. Tribunal held the goods classifiable under tariff item 52 in all those five cases. *Collector of Central Excise, Chandigarh v. Purewal & Associates Ltd.* (1985 ECR 1032) the Tribunal followed the judgement of Bombay High Court in the case of *Simmonds Marshal Ltd. v. M.R.Baralika*r, Assistant Collector of Central Excise, Pune and Ors., . In the said case of *Simmonds Marshal* (i) The nuts were manufactured as per specifications, they were not general fasteners, but had specific functional utility and their cost was 3 to 4 times the cost of ordinary nuts; (ii) the nuts were used as motor vehicle parts, they were ordinarily stocked in auto spare parts shops and were not available in the hardware market; (iii) evidence of special engineering features was produced and admitted; (iv) there was argument of hostile discrimination against the appellants as against the case of *Gurmukh Singh & Sons*.

The Hon'ble High Court held that the goods were to be classified under tariff item 52 and not under tariff item 68 of the Central Excise Tariff. It was also held that it would make no difference whether the goods were available only in ordinary hardware market or were available only in automobile shops.

8. In the case before us, the issue is similar as examined in the cases referred to in the preceding paragraph. The arguments advanced by the appellants in those cases were also similar. In spite of those arguments, this Tribunal and Bombay High Court held that the goods were covered by tariff item 52 and they could not be classified under tariff item 34-A or item 68 on the basis of end use. We do not find any reason for not following the ratio of those decisions. Respectfully following those decisions, we, therefore, hold that the products in dispute in the present case before us, namely, those covered by the 4 classification lists, are correctly classifiable under Tariff Item 52, and not under tariff item 34-A or item 68, prior to 10-5-1979 as well as from 10-5-1979.

1. In classifications list Nos. 6, 10, 12 and 13 filed by the appellants M/s. Precision Fasteners Ltd. they had claimed classification of their products under item 34-A, CET. The Assistant Collector however classified them under item 52, CET. The said order was set aside by the Collector (Appeals) under his order dated 25-10-1980. Thereunder he had remanded the case to the Assistant Collector for denovo adjudication.

2. On such re-adjudication the Assistant Collector, under his order dated 20-12-1980, ordered classification under item 34-A for the period prior to 10-5-1979, allowing exemption under notification 127/71, and under item 68 CET after 10-5-1979. Subsequently the Collector of Central Excise, Bombay-II issued notice under Section 35A(2) of the Central Excises and Salt Act proposing to review the order of the Assistant Collector as he was of the view that classification was to be under item 52, CET. After the appellants sent their reply thereto the Collector, under his order dated 10-4-1983, 26-4-1983, set aside the order of the Assistant Collector and ordered classification under item 52, CET. It is against the said order that this appeal has been preferred.

3. The goods covered by the four classification lists in dispute are the following:--

(a) Classification list No. 6 dated 2-6-1978:--Stud hub and wheel (Front and rear).

(b) Classification list No. 10 dated 3-8-1978:--Cylinder head bolt and main bearing bolt.

(c) Classification List No. 12 dated 13-11-1978:--Cylinder held bolt stud.

(d) Classification List No. 13 dated 13-11-78:--Track shoe bolt/nut, track bolt/nut.

4. From the order of the Assistant Collector it is seen that he had referred the matter, for expert opinion, to the Principal of the Victoria Jubilee Technical Institute and had obtained opinion under letter dated 13-8-1979. The Assistant Collector states that under that letter the Head of the Mechanical Engineering department has observed that the function of each part declared by the assessee was correct and that the products cannot be considered as nuts, bolts and screws as commonly known in the market. The Assistant Collector had relied upon the said

opinion and observed that he also felt that item 52, GET was not intended to cover every type of nuts, bolt and screw even when it has a special functional utility and is manufactured against specific order and supplied accordingly. He also took note of the fact that the subject goods were manufactured against specific orders for use in particular motor vehicles and that misuse of such products without reference to such special use would not be possible in view of the provisions of notification referred to by him.

5. In the show cause notice issued by the Collector, there was no reference to this certificate or the opinion expressed therein and why the Assistant Collector was not correct in relying on the said opinion.

In the reply to the show cause notice the appellants had referred to, and relied on, the opinion of the V.J.T.I., as disclosed in the order of the Assistant Collector.

6. The Collector in his order has stated that he is of the view that the technical opinion offered by the V.J.T.I. could not be relied upon in this case. In doing so he has given two reasons therefor. He firstly observed that insofar as the opinion had not been obtained by the Assistant Collector before he commenced the de novo proceedings the Assistant Collector was not entitled to rely on the same. I am unable to understand or appreciate this view of the Collector. It is not as if the proceedings before the Assistant Collector were of adversary character and the Assistant Collector was bound to disclose to anybody other than the assessee the opinion he had obtained. In this case the opinion favoured the assessee. I can understand a criticism if an adverse opinion obtained behind the back of the assessee was used against him. In this case the opinion favoured the assessee and was used in his favour. The Assistant Collector was not bound to disclose this opinion to anybody else.

7. The second reason stated by the Collector is that the opinion of the expert seems to have been influenced by the view expressed by the Assistant Collector in his referring letter. Unfortunately the Collector has not at all chosen to discuss the merits of the opinion and why in his view the opinion of the expert was factually incorrect.

Even if it may be, true that in writing his letter the Assistant Collector had expressed certain views it cannot be presumed that the expert was guided by the same in offering his opinion. As earlier noted the Collector has not even chosen to discuss the merits of the views of expert.

8. So far as the V.J.T.I. letter is concerned no copy thereof has been filed either by the appellants or by the department. This was pointed out to the appellants at the time of hearing since we felt reference to V. J. T. I. report would be necessary. Shri Sukumaran stated that he would later file a copy of the said report. We had made note of this in our order on the conclusion of the hearing. After the conclusion of hearing the appellants have, with their letter dated 30-9 1979, sent certain write-ups regarding the subject goods. In that letter they have stated that they have not been given copies of either the reference letter of the Assistant Collector or the reply received from the V.J.T.I. Therefore they have not submitted any copy of the report. The position therefore is that the Assistant Collector had relied on the opinion of V.J.T.I. in concluding that the subject goods performed certain special functions. The Collector just refused to consider the opinion for reasons which I have discussed earlier and found not acceptable. We do not have ourselves the report before us since the appellants have stated that they have no copy thereof and the department has also not filed a copy. I feel that in the absence of that opinion it would not be possible for us to come to any proper conclusion on the issue before us. As already stated, the rejection by the Collector of the said opinion was for reasons which I find are not proper.

9. The Collector further held that since the tariff description of item 52 covered all types of nuts and bolts, irrespective of their special design and functional utility, the question of classifying the subject goods as parts of motor vehicles under item 34-A prior to 1979, or even thereafter, does not arise. He further held that even if the subject goods are dealt with by traders in motor vehicle-parts they would be still known, and called, as bolts and nuts whether called as stud, track shoe bolt, track bolts/nuts, cylinder head bolts, main bearing bolts, etc. In a later paragraph he held that the utility and the function of the bolts and nuts are of no relevance for the classification under item 52, CET.10. Thus the Collector was of the view that irrespective of the functional utility of the goods, whether they perform the function

of fastening only or whether they perform other functions also in the machine in which they are to be used (automobiles in the instant case), they would still be liable to be classified under item 52 only.

According to him the market therefor, amongst automobile dealers only, is also of no relevance.

11. In this connection I may refer to the decision of the Karnataka High Court in the case of Ideal Jawa (India) Pvt. Ltd. . The issue in that case also involved the classification of various articles manufactured for use in motor cycles, the department contending that they would be classifiable under item 52, CET and the assessee contending that they would be. under Item 34-A, CET, the dispute being for the period prior to the amendment of item 34-A. In para. 25 the High Court held as follows:-- As could be seen from the description of the articles they are special types of bolts nuts and rods specifically manufactured to specification and as per the drawings for the assembly of motor-cycles manufactured by the petitioner-company. They, therefore, form integral part of the machines, with a distinct and specific function in the operation of the motor-cycles of which they are the component parts.

12. On that finding the High Court ordered classification under item 34-A and not under item 52. As earlier mentioned the question of the special functions performed by the subject goods appear to have been put forward by the assessee, and supported by the certificate of the V.J.T.I., but not considered at all by the Collector. For this reason also I am of the view that the order of the Collector, as it stands, cannot be supported.

13. On the question of the market in which the goods may be available (as an indication for classification) I may refer to the decision of the Bombay High Court in the case of PMP Auto Industries Limited . The issue in that case related to the classification of certain types of switches; whether they would fall under item 34-A as automobile parts or under item 61 as electrical lighting fittings. In paragraph 7 the High Court took into consideration the market-in which the goods would be available as an indicator regarding the classification also. As earlier mentioned, the Collector was of opinion that this criterion would not be relevant.

14. I may in this connection refer to an order of this Tribunal in the case of M/s. New Mangalore Engineering Co. (P) Ltd. (Order No.746/1987-D in Excise Appeal No. 939/83-D). The goods involved in the said order were certain types of bolts used in the automobile leaf spring assembly. Earlier the goods were being assessed under item 34-A, CET but subsequently under item 52, CET. The Tribunal observed that the said bolts were designed to take the stresses and strains generated by the load of the vehicle and they were intended to play a functional part in the leaf spring assembly. The Tribunal therefore held that the said products did not perform the function of mere fastening only.

Taking note of this circumstance it held that after the amendment of item 34-A, CET (when the said item covered specified motor vehicle parts only) the goods in issue were liable to be classified not under item 52, CET but under item 68, CET. It also observed that it is only such of the bolts and nuts as performed the function of fastening only that were known as bolts and nuts in the trade but not the goods in issue which had special functions to perform. As earlier mentioned this aspect, whether the goods now before us do have such special functions to perform, was not considered by the Collector as he chose to ignore, for wrong reasons, the certificate of the V.J.T.I.15. In view of the above discussion I am of opinion that the order of the Collector cannot be supported and the same should be set aside, remitting the matter to the Collector for consideration afresh taking into consideration all the relevant material.

16. It is no doubt true that after the amendment of the Central Excises and Salt Act in 1982 the Executive Collector does not have the power of review that he had under Section 35-A before amendment. But it may be noted that under Section 35-B(i)(d) appeals lie to this Tribunal against orders passed by the Collector under Section 35-A as it stood immediately before the appointed date, whether the order was passed before or after the appointed date. That would mean that in respect of review proceedings initiated before the appointed date (11-10-1982) the Collector was entitled to continue the said proceeding and pass orders.

That would indicate that the present matter also, where the review proceedings had been initiated before 11-10-1982, the Collector would be entitled to continue

the said proceeding under the present order, though under Section 35-A, as it now stands, he has no such powers.

17. Accordingly I would propose an order to allow this appeal and set aside the order of the Collector and remit the matter to him for readjudication and disposal in accordance with law.

For reasons recorded in the order of Brother Raghavachari with which I generally agree, I would also set aside the order of the Collector and remand the matter to him for re-adjudication after due consideration of all these reasons.

In accordance with the view of the majority, the order of the Collector is set aside and the appeal is allowed by remand of the matter to the Collector for de novo adjudication.

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