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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-22-1983

Reported in : (1983)LC1391DTri(Delhi)

Judge : Author: 1 A 10

Appellant : Escorts Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The issue in this case is whether the Industrial Tractors, namely, the 'Escort Tractor Hauler' manufactured by the appellants would fall within the ambit of tariff item 34(3a) (now tariff item 3411) or not.

On March 26, 1973 the appellants filed the Classification List classifying the Tractor Hauler under tariff item 34(3a) attracting duty at 10% ad valorem. The contention of the appellants is that the Asst.

Collector of Central Excise, Faridabad arbitrarily changed the classification of the same on 24-11-1975 to tariff item 34(4) (Motor Vehicles, not otherwise specified) attracting duty @ 15% ad valorem or Rs. 3,000/- per tractor whichever is higher. Shri C. L. Sawhney, on behalf of the appellants, further contended that the action of the Asst. Collector was in violation of principles of natural justice since no show cause notice was issued, nor any opportunity of personal hearing was granted though the appellants sought for the same (In this context attention was drawn to

the decision of the Hon'ble Supreme Court and Madras High Court in Asst. Collector, Central Excise, Calcutta v. National Tabacco Company-ELT 78/J.416 and Nuwood (P) Ltd. v. Supdt., Central Excise-ELT/81/84 respectively.) He stated that in the meanwhile they represented to the Government of India to provide correct classification for the Tractor Hauler. Thereon vide Board's Tariff Advice No. 3/78 dated 10-1-1978, the Government classified the same under tariff item 34(3a) (now tariff item 3411). He submitted that the impugned order of the Asst. Collector was passed in Nov., 1979 and thus it was evident that he had not paid any heed to the aforesaid tariff advice. Shri Sawhney raised the point of time-bar also on the ground that while their representation dated 19-12-1975 was still lying undisposed with the Asst. Collector the Range Officer, Faridabad, in pursuance of Asst. Collector's decision dated 24-11-75, issued a show cause notice dated 24-6-1976 demanding the differential duty and as such the period covered by the notice was 1-4-1973 to 31-10-1975 and thus the demand was hit by time-bar, i.e. period prior to 26-6-1975, under Rules 10 and 10A read with Rule 173(J). He also stated that the Asst. Collector surprisingly confirmed the demand under Rules 10, 10A read with Rule 173J only on one point i.e. 'the party have not gone in appeal against the final approval of the classification list'.

2. Being aggrieved by the Asst. Collector's order, the appellants went in an appeal before the Appellate Collector on 21-11-1979. The Appellate Collector upheld the order of the Asst. Collector on the ground that once the Asst. Collector had finalised the classification list, there was no question of granting any hearing to them and as regards the time bar, he observed that one year was available to the Department for raising the demand, as the Classification List was approved by the Asst. Collector on 24-11-1975 and the show cause notice was issued on 24-6-1976.

3. Shri A.K. Jain, on behalf of the respondent, started his arguments by stating that the tariff advice given by the Board was not binding on the Asst. Collector who was a quasi-judicial authority and hence he was not bound by that advice and the classification given by him was correct in law. He further argued that this case did not involve any classification issue since the issue which was involved was only the demand notice for the payment of differential duty. Hence, according to him,

the Tribunal is not called upon to give any finding on the classification. As regards the Supdt. of Central Excise invoking the provisions of Rules 10 & 10A while issuing a show cause notice on 24-6-1976, Shri Jain had mentioned that the same had been done by way of abundant caution. These were the two points on which Shri Jain relied.

4. We have carefully followed the arguments of both the sides. It does not appear from the records that it was a case of provisional assessment. Originally the duty on the goods under issue was paid at 10% ad valorem. Later on without any enquiry under Rule 173J read with Rules 10 & 10A, a demand notice was issued for the payment of differential duty and that too without giving any reason for the same.

When the appellants represented against it, they were not given any opportunity of being heard but a show cause notice was issued for payment of differential duty. The argument of Shri Jain regarding the invocation of Rule 10A did not carry any conviction since no abundant caution was really necessary in this case. As regards the legality of tariff advice, though in principle we agree with Shri Jain's argument, but all the same it appears that presently the goods under issue are being classified under tariff item 34-11 [formerly tariff item 34(3a)] as per that advice. We are also convinced that the goods in issue would squarely fall within the ambit of tariff item 34(3a) (now 34-11) as per the reasoning given in tariff advice referred to above. We strongly feel that the demand issue arose only because of the incorrect classification and as such we do not agree with the arguments of Shri Jain that the classification issue is not before us but on the other hand we feel that is the main or rather real issue which is now before us and hence we feel that the goods under issue would squarely fall under the old tariff item No. 34(3a) of the Central Excise Tariff with consequential relief to the appellants. When once the classification issue is decided, it is totally unnecessary to go into the matter whether any portion of the period for which demand notice was issued was time-barred or not.