

Collector of Central Excise Vs. Trigan Metal Sections

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-25-1988

Reported in : (1989)(19)ECC282

Appellant : Collector of Central Excise

Respondent : Trigan Metal Sections

Judgement :

1. Question involved in the subject appeal is classification of steel panels, partitioned plates and shelves. The department contends that these are parts of steel furniture since these have been given a special shape so as to make them identifiable as an essential component of steel furniture and from which in conjunction with other parts, an article of steel furniture can be assembled with bolts or nuts and as such these are classifiable, according to the department, under Tariff Item 40 and are not covered by the exemption Notification 52/70 dated 1.3.1970.

1.1 The assessee (respondent herein), on the other hand, had filed the classification list of the said products under Tariff Item 68 of the CET as it stood before 22.8.1986.

2. The original authority, namely the Assistant Collector of Central Excise in coming to his conclusion in his order dated 2.1.1984 has given the following findings : "I have gone through the records of the case carefully. For principle of natural justice also, on 29.10.1983 I paid personal visit to M/s. Trigan Metal

Sections, and examined the above referred products. Their point No. 1 is not tenable since they are manufacturing above referred parts which are having special design, and structure in conjunction with or without nuts and bolts steel furniture can be assembled. A wholesale dealer is not a manufacturer of steel furniture but he gets certain parts from one factory and other parts from the other, wherever he gets benefit in price to make the price competitive at a lower rate for sale special gauge according to his choice is preferred by him. Their argument regarding Ministry's opinion is specially designed products of steel such as counters, cabins, catwalks etc. used by industrial establishments cannot be regarded as total furniture classifiable under T.I. 40. This argument is also not acceptable since the budget of 1969, the Tariff Definition of steel furniture has been revised and it has included parts of steel furniture also. Shelves, panels and partition plates may not be termed as steel furniture but due to design and special shape the same are capable of use for assembling items of furniture and therefore they can be termed as identifiable.

It only speaks that they are clearly identifiable as essential components of steel furniture. The above referred parts are identifiable as such for racks as well as cup-boards. It does not require further fabrication such as drilling, painting, forming, revision etc. On these basis also their argument at point 'C is not . tenable. As regards point D' shelves are known in commercial and common parlance. A purchaser would ask a cabinet or a rack of five/six shelves in it at the time of purchase, so both trade and purchaser are in know of shelves. Similarly, panels and partitions, if purchaser so desires will be asked by him to a dealer.

As regards point 'E' the classification of identical products under T.1.68 at Bombay Collectorate it is not proper for this authority to inquire into the circumstances in which they have classified these parts under T.I.68.I, therefore, do not see any reason to go against in classifying the said goods under T.I. 40 which has already been classified as such by the then Asst. Collector C. Ex. Dn. III, Baroda under his No. V. 68(3)15/MP/81 dated 16.10.1981." 3. On appeal before the Collector of Central Excise (Appeals), New Delhi (At Bombay), by his order dated 2.4.1985, he has held that the goods are classifiable under T.I.68. Points raised by the assessee before the Collector (Appeals), his discussion and findings are

reproduced below : "The appellants reiterated the arguments that the products if classified, they should be given the benefit of Notification No. 52/70 or else the product should be classified under T.I. 68. They argued that similar products manufactured by Godrej & Boyce are classified under T.I.68. They produced samples of products manufactured by them. The appellants argued that Shelves panels are identical parts manufactured by Godrej and Boyce Co. who classified them as panels, panel divider etc. In any event they argued they cannot be parts of steel furniture and should merit classification under T.I.68 as is done by Godrej Boyce. I have gone through the appeal memorandum and submissions made at the time of personal hearing. I have examined the products and find that there is considerable force in their arguments and the product cannot be considered to be specially designed parts of steel furniture and as such they merit classification under T.I.68 only as is done in the case of other manufacturers in other parts of the country.

In the result the appeal succeeds, and the order of the Assistant Collector is accordingly set aside. The appellant is entitled to consequential relief." 4. Learned SDR, Shri J.N. Nigam for the appellant-Collector has urged that the impugned order passed by the Collector (Appeals) is a very cryptic order. He does not give any reasons whatsoever for classification of the goods under T.I. 68. He merely states that he has examined the goods and on such examination he straightaway comes to the conclusion that they fall under T.I. 68 without in any way recording any reasons as to how T.I. 40 is eliminated-before arriving at Item 68.

4.1 Learned consultant further states that there is no dispute that the goods are capable of being used as parts of steel furniture. The fact that these are used for other purposes, namely ladders, catwalks or large sized storage racks etc. does not take away from the fact that these parts are parts of steel furniture and according to him they are clearly classifiable under T.I. 40.

4.2 He relies further for his proposition on Board's letter No.33/19/68-CXVII dated 17.10.1968 which states that side panels, back shelves and partition plates should be regarded as dutiable under the category of furniture in unassembled condition as these panels and shelves are mainly used in assembling racks and cup-board

which are the items of furniture. The learned consultant further states that this clarification by the Board when Tariff Item 40 was introduced in the Central Excise Tariff can be considered as an important aid to construction of the said tariff item. For this proposition he relies on Supreme Court's judgment in AIR 1979 SC 1079 [Deshbandhu Gupta v.D.S.E. Association].

4.3. It has also been pointed out by the learned SDR that the sizes of panels and panels divider viz. panels 36" x 12" to 36" x 24" and panel dividers 12" x 6" to 24" x 18" indicate that these articles are usable as parts in the racks of cup-boards and are, therefore, correctly classifiable under T.I.40, 5. Opposing the contentions of the learned SDR, the learned consultant Shri R.K. Jain for the assessee (respondent) has urged that the order passed by the learned Assistant Collector is based on examination of the goods. Similarly, no doubt, as pointed out by the learned SDR the order passed by the Collector (Appeals) which is impugned now is also based on examination of goods. In hierarchical system the learned consultant submits that the conclusion on examination of goods arrived at by a superior authority should prevail over that of lower authority.

In this view, therefore, there is nothing wrong, if Collector (Appeals) has come to a conclusion on examination of the goods that these are not classifiable as parts of furniture.

5.1 Learned consultant further points out that the order-in-original of the Assistant Collector speaks of the parts as "having special design and structure in conjunction with or without nuts and bolts, steel furniture can be assembled" but the original adjudicating authority has not described any feature of special design and structure of the parts which make them clearly "identifiable as essential component parts of steel furniture" so as to take them outside the purview of the exemption Notification 52/70, dated 1.3.1970. Learned consultant admits that the parts in question no doubt has multiple uses. Steel furniture can also be made but other things like catwalks, ladders, mezzanine floors, pigeon structures can also be made out of it as is apparent from the catalogues and the photographs. He also points out that in fact a table constructed from these sections at page 11 of the catalogue produced by the respondent clearly shows that the holes within the

sides of the table top was manufactured out of these parts being used in an industrial establishment for the use of workers. If this could be termed as a 'furniture' in the normal sense as the term 'furniture' is understood to be, there should have been no holes on the sides of the table top so manufactured because this takes away from the beauty of the table top. These holes in fact further indicate that if so desired by the manufacturer some further panels can be fixed to table top to make any other thing so desired by industrial establishment.

5.2. These goods, according to the learned consultant, are in fact normally used for parts of various structures as mentioned above which are used in an industrial establishment. These cannot be, therefore, called parts of steel furniture. For this proposition, he relies on a recent decision of the Tribunal in the case of . Steel Authority of India Ltd. v. C.C.E., Indore vide order No. 511/88-D dated 10.8.1988.

He states that this is the latest decision based on Bombay High Court's decision in the case of Elpro International Ltd. v. Union of India and Ors. and confirmed by the Supreme Court [reported at 1985 (19) ELT 3 SC] in an SLP against Bombay High Court's decision. Ratio of Bombay High Court's judgment in Elpro International Ltd. as brought out in Tribunal's judgment vide order No. 511/88-D mentioned supra is as follows : "that the Item 'Steel Furniture' in Item No. 40 has to be understood keeping in view the fact that under the First Schedule of the Tariff, the classification is resorted to so that items are included under different headings, such as, food, beverage, crude materials, minerals, fuel etc. Furniture comes under the heading manufactured goods and, therefore, the emphasis appeared to be on the metal out of which it is prepared. Accordingly the High Court observed, furniture may have to be interpreted as furniture understood by a common man in common parlance.

In the above context, the definition of furniture in the Oxford English Dictionary has also been referred to by the High Court as under: "Moveable articles, whether useful or ornamental, in a dwelling house, place of business or public building. Formally including also the fittings." In view of this definition, it was observed that it is necessary for purposes of classification to bear in mind the concept of decoration as well as utility and specific use in the dwelling house or place of

business or some other building.

In the words of the High Court when the word 'furniture' is thus to be understood in common parlance in our opinion, this concept of user and perhaps also, of the price to be paid for those items, would offer us a good guide in concluding whether they are pieces of furniture." 6. In view of the foregoing submissions, learned consultant has urged that the appeal deserves to be rejected.

7. Replying the learned SDR states that the judgment of the Supreme Court as well as of the Tribunal relied upon by the learned consultant pertain to steel furniture and not parts of steel furniture. These judgments, therefore, according to him, have no application.

8. We have carefully considered the pleas advanced on both sides.

Tariff Item 40 and Notification 52/70 which have been relied by the department are reproduced below for the sake of appreciation of their arguments : T.I. 40 - STEEL FURNITURE MADE PARTLY OR WHOLLY OF STEEL, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, whether in assembled or unassembled condition and parts of such steel furniture (but excluding slotted angles and channels made of steel).

Notification No. 52/70. - In exercise of the powers conferred by Rule 8(1) of the Central Excise Rules, 1944, the Central Government hereby exempts parts of steel furniture falling under Item No. 40 other than those which have been given a special shape or design so as to make them clearly identifiable as essential components of steel furniture and from which, in conjunction with other parts, an article of steel furniture can be assembled with or without bolts and nuts, from the whole of the duty of excise leviable thereon." 9. From the perusal of the Notification 52/70 reproduced above and the Tariff Entry it indicates that while all parts of steel furniture are classifiable under Tariff Item 40, it is only the parts which - (ii) are thus clearly identifiable as essential components of steel furniture are liable to duty.

10. All other parts of steel furniture which do not satisfy the aforesaid two criteria are exempt from duty under Tariff Item 40 in terms of the said Notification 52/70, dated 1.3.1970.

10.1 It is true that as pointed out by the learned SDR that the judgments of the Supreme Court and Bombay High Court in the case of Elpro International Ltd. and of the Tribunal in the case of SAIL are not on parts of steel furniture and therefore, have no relevance to the issue involved herein. Nevertheless, the said judgment refers to another judgment of the Tribunal on the assessment of parts of steel furniture falling under Tariff Item 40. That judgment is in the case of Collector of Central Excise, Cochin v. New Chelur Manufacturers [Order No. 587/1987-D, dated 27.7.1987]. This judgment holds as follows : "The mere fact that the customer may use part of the same for fabrication of not merely storage racks but also of catwalks, ladders, mezzanine floors etc. would not make any difference in the matter of classifying these products as parts of steel furniture".

10.2. We notice from the judgment vide order No. 511/88-D in the case of M/s. SAIL that while one of the learned members Shri K. Prakash Anand holds that the view taken by the Tribunal in the aforementioned case of M/s. New Chelur Manufacturers was erroneous and merits reconsideration (of para 11), the other learned Member Shri V.T.Raghavachari in para 3 of his separate order holds that the decision of the Tribunal in the said case is not incorrect. The other learned member of the Bench in the case of M/s. SAIL, Sr. Vice-President Shri G. Sankaran does not at all refer to the correctness or incorrectness of the judgment of the Tribunal in the case of M/s. New Chelur Manufacturers. It is to be noted that the judgment of the Tribunal in the case of M/s. New Chelur Manufacturers was also decided by the same Bench consisting of the aforesaid three learned Members. In this view therefore, it can be said that the decision of the Tribunal in the case of M/s. New Chelur Manufacturers cannot be taken as a final and binding decision.

103 We further observe that the Tribunal's judgment in the case of New Chelur Manufacturers holding that merely because some portion of the parts of steel furniture are used for catwalks, ladders, mezzanine floors etc. would not make for

any distinction in the matter of classifying such parts as parts of steel furniture have not noticed the peculiar wordings of Notification 52/70, dated 1.3.1970 as reproduced above. In fact, this entire judgment of the Tribunal in the case of New Chelur Manufacturers does not at all refer to Notification 52/70.

Therefore, we are of the view that the said judgment of the Tribunal though in favour of the Revenue cannot be taken as one interpreting the scope of Notification 52/70.

11. Coming to the wordings of the said notification as mentioned above that only these parts which have been given special shape and design so as to make them identifiable as essential components of steel furniture alone are liable to duty, the appellantCollector does not point out as to what is the special shape or design which the products under consideration have been given so as to make them as essential components of racks as well as cup-boards. It is apparent from the appellant-Collector's grounds of appeal and the findings of the original authority that they take everything as parts of furniture which are capable of use for assembling items of furniture. By a plain reading of the notification, such a meaning does not come out; otherwise there would have been no need to use the expressions, namely "special shape or design" and "identifiable as essential components of steel furniture".

11.1. The word "essential" has been defined in the Chambers Twentieth Century Dictionary as follows : From the aforesaid meanings of the term "essential" it is clear that the shelves, partitions and panels, the products under consideration, must be indispensable or important in the highest degree to the making of steel furniture and this essentiality of any parts of steel furniture is to be brought about by a special shape or design to that part. The true emphasis i.e. the special shape or design of a part and their being essential component of steel furniture, indicates that the parts should be of such shape or design so that they are used only for steel furniture. If the parts are of such shape or design that they can be used for a variety of purposes, we are of the view, that such parts should not fall within the scope of the expressions "special shape or design" so as to make them "clearly identifiable" as essential components of steel furniture. It is admitted on both sides that the parts

under consideration have multiple uses and therefore, even if they are treated as parts of steel furniture they would be exempted by Notification 52/70, dated 1.3.1970.

12. The department's reliance on CBEC's letter dated 17.10.1978 annexed with the appeal is misplaced. Relevant para for proper appreciation therefrom or which the learned SDR has placed reliance is reproduced below : "After careful examination of the matter Board have taken the view that since the tariff item covers not only complete units of steel furniture but also such parts which do not require further fabrication drilling, painting forming reworking, etc. and which can be and are assembled into complete units by fixing nuts and bolts, the following parts used in the manufacture of slotted angles should be regarded as dutiable by reason of their falling under the category of furniture in un-assembled condition : From the emphasised portion it is clear that the Board's letter treats these 4 parts as furniture in unassembled condition. In other words, if the clearance of these parts takes place in sets comprising of all the aforesaid parts then these sets are termed in the Board's letter as "unassembled steel furniture". The relevant para, therefore, does not say that if these parts are cleared separately without being formed into sets, they are to be treated as parts of steel furniture which have been given special shape and design so as to make them essential components of steel furniture and therefore, outside the purview of Notification 52/70. In fact, the Board's letter dated 17.10.1968 does not interpret and cannot interpret the scope of a subsequent Notification 52/70.

13. In the above analysis it has been assumed that the products made by the appellant are parts of steel furniture because they find use in assembling of steel furniture as well besides other uses. A question arises whether such an assumption is a valid one. Strictly speaking an item of steel furniture, say a cupboard or a rack when dismantled comprise number of things: fabricated steel sheets, shelves, handle, the locking equipment, corner plates, and such other items as bolts and nuts or rivets or studs or hinges. Can it be said that all these items are parts of steel furniture even though some of them have general use like bolts, nuts, rivets, studs, hinges, locking arrangement? Even the steel sheets referred to in the above example can be considered parts only because they have

been given the same form and shape. Had they been plain sheets they could find their use anywhere. The very concept of part, therefore, implies some shape or design to a general purpose article which can be really fitted for composing into an article; only in such an event can that general purpose article, given a proper shape or design, be treated as a component part of the other article. Unless a shape and design has been given it will not be appropriate to call a general purpose article as a component part of another article. In the instant case, panels, shelves, and partition plates admittedly are used not only in assembly of steel furniture but can also be used for many other structures such as catwalks, mezzanine floors, ladders etc. in an industrial establishment. In view of the multiple uses of the products under consideration it would not be appropriate to call them as parts of steel furniture at all though they may find their use in assembling of steel furniture as well. In this view, therefore, the classification upheld by the lower appellate authority as Tariff Item 68 for the goods under consideration is appropriate. Hence the appeal is rejected.

14. Since the cross-objections pray for sustaining the impugned order, these are also disposed of in the above terms.

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