idicol Piping and Engineering Vs. Commissioner of Central Excise

idicol Piping and Engineering Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/46823

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Jan-16-2008

Reported in : (2008)(128)ECC173

Judge : S T Chittaranjan, D Panda

Appellant : idicol Piping and Engineering

Respondent : Commissioner of Central Excise

Judgement :
1. Heard both sides. The appellants received a Purchase Order from M/s.

BHEL for manufacturing and supply of Turbine Integral Piping Nine Systems, the details of which are in the Purchase Order dated 21.11.94.

This Purchase Order gives specification for two of such Systems. It is the case of the appellants that they have supplied the impugned goods against this Purchase Order and hence, it is their submission that the goods which have been supplied should be treated as two integrated auxiliary plants for boilers and they may be extended the lower rate of duty @10% under sub-heading 8404.10. The Department, however, held the impugned goods supplied by the appellants as parts of auxiliary plants and classified the same under subheading 8404.90 chargeable to duty @15% and hence, has confirmed the differential duty-demand on the appellants under the impugned Order.

2. Shri C.R. Das, learned Advocate appearing for the appellants states that the two integrated auxiliary plants for which the Purchase Order was placed with the appellants were very big in size and therefore, those could not have been supplied in one consignment and therefore, the same has been supplied in several consignments, but against one Purchase Order. In this context, he cites the following decisions of the Tribunal to claim that the goods in question should be treated as a complete auxiliary plant and classified under sub-heading 8404.10 attracting 10% of duty:Flat Products Equipments (I) Ltd. v. C.C.Ex, Mumbai-IIITRF Ltd. v. C.C.Ex., Jamshedpur (d) 2004 (176) ELT 195 (Tri.-Del.) Sulzar Flovel Hydro Ltd. v. C.C.Ex., Delhi-II 3. Heard the learned J.D.R., Shri N.C. Chowdhury who supports the impugned Order.

After hearing both sides and perusal of the case records including the cited decisions, we find that the impugned goods in question have been despatched from the factory of the appellants in 26 (twenty-six) consignments over a period of nearly one and a half years during 18.7.95 to 4.12.96. It is clear from the Despatch Details that parts of KG-9 and KG-10 weighing various quantities have been supplied over this long period and the appellants have also indicated the amounts separately for each consignment. In this connection, we have also perused the relevant General Interpretative Rule 2(a) which reads as follows: 2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

4. We find that the aforesaid Rule permits classification of machinery under the Headings specific to the machinery, even when it is incomplete or unfinished, provided that, as presented (emphasis ours), (Sic) the incomplete or unifinished article has the essential character of the complete or finished article. The Rule also permits classification of goods presented unassembled or disassembled as a machinery under the Heading appropriate to such machinery. However, in the present case as stated earlier, we find that only parts of the two integrated

auxiliary plants have been presented/cleared from the factory of the appellants on different dates during a periods spanning around one and a half years. It is clear that not only these parts have been cleared separately, but they have also been manufactured over a long period of time. Hence, each of these parts as cleared/presented obviously do not have the essential character of the complete machinery. Therefore, the decision of the lower Appellate Authority classifying individual consignments as parts under sub-heading 8404.90 is fully in conformity with the General Interpretative Rule 2(a), and the same does not require any interference. We note that considering the circumstances of the case, the lower Appellate Authority has already set aside the penalty and hence no further relief is required to be given to the appellants by this Tribunal. The appeal is rejected.