Commissioner of Cen. Excise Vs. Tata Ssl Ltd.

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SooperKanoon Citation : sooperkanoon.com/47181

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-11-2008

Judge : J Balasundaram, Vice, S T A.K.

Appellant : Commissioner of Cen. Excise

Respondent : Tata Ssl Ltd.

Judgement :

1. The issue in dispute in this appeal relates to classification of M.S. Tanks and vats fabricated by the respondents herein in their factory - whether, under Chapter Heading 84.19 as claimed by the assesses and accepted by the Commissioner in the impugned order or under Chapter Heading 73.09 as contended by the Revenue.

2. We have heard both sides. We find that the Commissioner (Appeals) whose order is challenged before us has entirely relied upon the earlier order of Dec. 2001 of the Commissioner (Appeals) in the case of the same assesses holding that M.S. Tanks fall for classification under Chapter 84.19. The relevant finding is reproduced herein below: Ms Ida Gonsalves, Sr. Account Officer of the Company appeared for personal hearing. She said that the issue relates to the classification of M.S. tanks manufactured from mild steel plates of 8 to 12 mm thickness. She said that there was specific entry available for their product in the HSN. The process of manufacture is also relevant in the present matter in which M.S. steel sheet duly undergone pickling treatment are used for the manufacturing process. This is done to remove impurities, rust and scales.

According to them the product MS tank is rightly classifiable under CSH 84.19. For them this item is not the final product but their final product is iron and steel wires which are subjected to pickling process in these tanks. Pickling is a process, which is used to give surface treatment to their final products, iron and steel wires. Ch.84.59 specifically mentions tanks used for pickling purposes. They do not use these tanks for any other purpose and the tanks are made of mild steel plates. Therefore, the most appropriate classification for these tanks both due to the shape and size and nomenclature as per the common trade parlance would be pickling tanks only. M.S. Gonsalves pleaded. Hence, classification of these items under CSH 73.09 is not correct, as the same is not that appropriate as it is under CSH 84.19. The adjudicating Officer has relied on the wording 'vats mean for pickling' and excluded tanks from its purview which is neither logical nor according to the specific scheme of the classification laid down in the HSN for these products. She further pleaded that dictionary meaning of vats includes "large tub, eistern, tank, or other vessel especially for holding something in liquids in process of manufacture". In the grounds of appeal it is stated that the adjudicating officer did not appreciate the fact that wherever any heading in the Central Excise was exactly the same as that in the HSN then the explanation provided in the HSN would prevail while interpreting the entries therein. HSN specifically mentioned vats etc. for pickling and degreasing purposes, she pleaded. The tariff description under Ch.76.11 is as follows: Aluminium reservoirs, tanks, vats and similar containers, for any material (other than compressed or liquefied gas) of a capacity exceeding 300L, whether or not lined or heat insulated, but not fitted with, mechanical or thermal equipment.

From the above it is clear that although all tanks, vats and similar containers should be classified under this heading but not those fitted with mechanical and thermal equipment. Again the tanks and vats classified under this tariff heading could be put to any use for, either for restoring liquid or solids because there is no restriction based on their use when we say only such tanks or vats not fitted with mechanical or thermal equipment. This limitation naturally excludes, such tanks and vats which are fitted with the same, from the purview of 76.11. In other words, there can also be such tanks and vats which are fitted with mechanical and thermal equipments but are not classifiable under CSH 76.11. On the other hand tariff description under Ch.84.19 is: Machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming drying evaporating vaporising, condensing or cooling other than machinery or plant of kind used for domestic purpose; instantaneous or storage water heaters non electric.

Although above description does not include tanks and vats but it includes machinery, plant or laboratory equipment for treatment of materials by certain processes mentioned therein. Another question which emerges from the perusal of tariff description given under these two headings is : where should we then classify tanks and vats fitted with mechanical or thermal equipment, which means and points out to the requirement that there should be one more tariff entry for such vats and tanks which are fitted with such additional equipment. Therefore, tariff description under CSH 76.11 is not completely generic in nature embracing all the tanks and vats under its ambit. But it categorically excludes such tanks, vats and containers which are fitted with the aforesaid additional equipment, Perhaps some such reasons necessitated inclusion of tanks and vats for pickling or decreasing metal under CSH 84.19. For any manufactured product to become excisable it should have definite profile shape, size, design, finish composition and end-use apart from marketability as decided in Empire Industries matter by the Apex Court. The assessee pleaded that pickling tanks are not their end product, but the end product is iron and steel wires. Therefore, for classifying such tanks and vats we should also keep usage in mind while classifying these goods. It is because certain tanks and vats fitted with mechanical and thermal equipment have been kept out of the purview CSH 76.11. Therefore, we are left with the option to choose next specific entry for the appellant's product. As indicated above HSN classification CSH 84.19 specifically includes tanks meant for prickling process. The impugned Order-in-Original has not discussed end use of the product and exclusion of tanks and vats fitted with thermal and mechanical equipment, particularly those ones which are used for pickling process. The order includes all tanks and vats whether or not fitted with additional equipment irrespective of their end use and size. There is no revenue implication involved, as the tariff rate of duty under both the headings is 16% only. Therefore, the Order-in-original No.

12/Dy.Commr./C.Ex./KVI/2000 dt.14.02.2001 is thereby set aside allowing the appeal.

3. In the memorandum of appeal filed before the Tribunal, there is no averment that the above order of Dec.2001 has been challenged in appeal and if so what is the outcome thereof. Further, the grounds of appeal are in respect of the present impugned order wherein the lower Appellate Authority has not given independent reasonings but has entirely relied upon the Commissioner (Appeals)' order of Dec.2001. In the absence of any thing on record to show that the order of Dec.2001 of the Commissioner (Appeals) either has been challenged or set aside by the Tribunal, and in the absence of any separate finding in the present impugned order, we see no reason to interfere with the order passed by the Commissioner (Appeals) forming the subject matter of the above appeal, and accordingly uphold the same and reject the appeal.