Cimmco Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-16-1989

Reported in : (1989)(21)LC292Tri(Delhi)

Appellant : Cimmco Ltd.

Respondent : Collector of Central Excise

Advocate for Pet/Ap. : Shri. V. Lakshmikumaran

Judgement :

1. The issue involved in this appeal is whether Air Drive Reservoirs manufactured by the appellants in their factory and fitted to Bottom Discharge Hopper Wagons are metal containers within the meaning of Item 46 of the First Schedule to the Central Excises & Salt Act, 1944 (the Schedule is referred to hereafter as 'CET'). The other issue which was before the adjudicating authority, namely, whether the removal of such reservoirs within the factory for captive consumption constituted removals within the meaning of Rules 9 and 49 of the Central Excise Rules, 1944, is not in issue before us, as per the statement made at the Bar by Shri V. Lakshmikumaran, Counsel for the appellants, since it has already been settled by the Supreme Court's pronouncements. The appellants' contention is that Air Drive Reservoir is a component part of their manufactured product, namely, Railway Wagons falling under Item 68 and are made according to design and specifications provided by the customer. It is seen from the order that the Bottom Discharge Hopper Wagons are required to be fitted with an Electro - pneumatically operated door operating mechanism. The Air Drive Reservoir performs the

function of opening and closing the bolts on the doors of the wagons with the aid of pressure. The Additional Collector has held that though the Reservoirs might be of a highly sophisticated nature and be an integral part of the wagon, they were not different from other pressure containers sold in the market and as such they would fall under Item 46, CET. On this basis the Additional Collector demanded Rs. 18,934.15 as duty leviable on 176 Air Drive Reservoirs and imposed a penalty of Rs. 1000/- on the appellants for contravention of various provisions of the Central Excise Rules.

2. Before us, Shri V. Lakshmikumaran submitted that the Reservoirs in question are not 'containers' ordinarily intended for packing of goods for sale. Shri Chakraborty, DR, however, defended the impugned order for the reasons set out therein.

3. We have considered the submissions and perused the record. Item 46, CET, covers "metal containers not elsewhere specified". There is an Explanation to the effect that the expression "Containers" has the meaning assigned to it in the explanation to Item No. 27. This latter Explanation reads as follows :- "Containers" means containers ordinarily intended for packaging of goods for sale, including (collapsible tubes, casks), drums, cans, boxes, gas cylinders and pressure containers, whether in assembled or un-assembled condition and containers known commercially as flattened or folded containers.

It may be seen that for an article to be termed "container" under Item 46, it should be one ordinarily intended for packaging of goods for sale. The record shows the present Air Drive Reservoir is not a pressure container ordinarily intended for packaging of goods for sale.

Its function is opening and closing of Bottom Discharge Hopper Wagons with the aid of pressure. The wagons themselves are used as a means of transport. In the circumstances, we fail to see how the Air Drive Reservoirs could, by any stretch of imagination, be called "metal containers".

4. In this connection, Shri Lakshmikumaran placed before us a Trade Notice No. 27/70-CE dated 19-3-70 setting out the Department's own understanding in the

matter. The notice says that containers ordinarily intended for conveyance or storage of goods do not come within the scope of Item 46. Rail road tankers and tank wagons intended for conveyance of petrol products and other liquids are also not excisable under the said item. This, in our view, sets out the correct understanding of the scope of the item.

5. In the light of the foregoing discussion, we hold that the subject goods did not fall for classification under Item 46, CET. The appeal is allowed with consequential relief to the appellants both as regards duty and penalty.