

Greaves Cotton Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-02-1983

Reported in : (1984)(15)ELT226TriDel

Appellant : Greaves Cotton Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This is a revision application (hereinafter called "appeal") filed before the Central Government which under Section 35P of the Central Excises and Salt Act, 1944, stands transferred to this Tribunal to be disposed of as if it were an appeal presented before the Tribunal.

2. The goods under consideration in this case are described by the appellants as "Diamond Products". They were classified by the Excise authorities under Item 51 of the Central Excise Tariff Schedule, as "Grinding Wheels and the like". The appellants contested this classification, and it is for resolving this dispute that the matter has come up before us.

3. Appearing for the appellants, Shri K.S.C. Bose explained that after the introduction of Item 51 in the Central Excise Tariff in 1971, the appellants had submitted a classification list under Rule 173B of the Central Excise Rules, in which they listed various products manufactured by them. He stated that in this list the goods were described as being excisable under Item 51 and that the appellants were under a mis-apprehension of the correct legal position.

Subsequently the appellants took the stand that these goods did not fall under Item 51. After some correspondence, including a show cause notice issued to the appellants and their reply, and after a personal hearing before the Superintendent of Central Excise, that officer passed an order in which he held certain of the goods manufactured by the appellants as attracting duty under Item 51, CET. The goods held to be so classifiable fell under 3 general headings in the classification list filed by the appellants. These headings are reproduced below :- As mentioned above, an appeal against the above order was rejected, the Appellate Collector observing that "the appellants mainly relied on B.T.N. which is not a part of Tariff".

4. Shri Bose sought to raise a point that the goods could not be classified as "Grinding Wheels" since many of them were not in the shape of wheels. In this connection he referred to the Assistant Collector's order, in which it has been mentioned that the items held by him as classifiable under Item 51 were "manufactured out of industrial diamond powder mixed with bonding material and moulded in a form of rim or segments and fitted to the based metal". Shri Bose sought to argue that a rim or a segment could not be termed as a "wheel". Since this pertains to a question of fact, he was asked whether such a ground was taken before the Assistant Collector or the Appellate Collector. Shri Bose admitted that it was not.

5. We pointed out to Shri Bose that such a basic question of fact could not appropriately be raised at the second appeal stage. Both the wording of the relevant tariff item and the nature of their own goods were very well known to the appellants at the relevant time and they could have raised this ground at the earlier stage. Having failed to do so, they are not entitled to raise such a ground before the Tribunal.

6. Apart from this, we observe that the description contained in Item 51 of the Central Excise Tariff is very comprehensive. For ready reference it is reproduced below :- "51. Coated abrasives that grinding wheels, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, the following, namely :- (2) Grinding wheels and the like (including grinding, sharpening, polishing, trueing and cutting wheels, heads, discs and points), of

natural stone (agglomerated or not), of agglomerated natural or artificial abrasives, or of pottery, with or without cores, shanks, sockets, axles, and the like of other materials, but not mounted on frame work; segments and other finished parts of such wheels, of natural stone (agglomerated).

Explanation.-The expression "Grinding Wheels and the like" and "Segments and other finished parts of such wheels" shall mean those used on machine tools electro-mechanical or pneumatic hand tools, for the trimming, polishing, sharpening, trueing, or cutting [of metals, stone, glass, plastics, ceramics, rubber, leather, mother of pearl, ivory and the like." It is clear from this description that the item covers not only complete grinding wheels but also segments and other finished parts of such wheels. Therefore, even if the appellants are right in saying that some of their goods were not complete grinding wheels, this would not take them out of the scope of Item 51.

7. Shri Bose then argued that Item 51 of the Central Excise Tariff corresponds to heading 68.04 of the CCCN. The CCCN also includes a separate heading Number 82.05 covering interchangeable tools for hand tools, for machine tools etc. From 1-3-1974 a separate Item No. 51A for "tools" was introduced in the Central Excise Tariff Schedule. According to Shri Bose, the goods manufactured by them were correctly classifiable as tools, and this was evident from the subsequent introduction of a specific item for tools in the Central Excise Tariff.

In this connection Shri Bose referred to a Trade Notice No. 50/CE/77 dated 18-8-1977, said to have been issued by the Chandigarh Central Excise Collectorate and appearing at page 782-783 of Central Excise Tariff, 1983-84, published by Central Law Office. This trade notice has been reproduced under Item 51 A. The notice lists various types of tools as falling under Item 51A, the list being taken from the Explanatory Notes to the CCCN relating to Item 51 A.8. In the Trade Notice, it has been mentioned inter alia that "Composite tools consist of one or more working parts of base metal, of metal carbides, of diamond or of other precious or semi-precious stones, attached to a base metal support...". (This part of the Trade Notice does not purport to be an extract from the Explanatory Notes to the CCCN).

9. Shri Bose also referred to certain Indian Standard Specifications.

He argued that Specification No. IS-2324-1963 was for grinding wheels and No. IS-3330 for mounted points, and there was a separate Specification No. IS-2364-1965 for diamond tools. He argued that if diamond tools were regarded as grinding wheels the Indian Standards Institution would not have issued separate standards for them. Shri Bose did not however have with him the specifications referred to, and could not show us anything to the effect that the I.S.I. regarded diamond tools or diamond grinding wheels as being something clearly different from the general class of grinding wheels.

10. Shri Bose also sought to rely on affidavits filed by one Shri N.K.Patel and one Shri K.B. Mansharamani, as regards the nature of ordinary grinding wheels and diamond impregnated grinding wheels. These affidavits are purported to have been affirmed in April 1975 and therefore would have been made with reference to the appeal before us which is dated 11-4-1975. Shri Tayal objected to the introduction of evidence in the nature of such affidavits at the stage of revision application or second appeal. We did not however have to rule on that objection because we found that, very surprisingly, what were purported to have been the original affidavits filed with the original revisional application did not bear the signatures of the deponents or the seal of a Notary Public. Such unsigned papers obviously cannot have any value and we can only express our surprise that these should have been filed in that condition and sought to be relied upon.

11. Finally, Shri Bose argued that the goods under consideration were now being classified by the Central Excise Department under Item 51A of the Central Excise Tariff Schedule, showing that they did not conform to the description under Item 51.

12. For the Department, Shri Tayal also referred to the CCCN classification. He agreed that sub-item (2) of Item 51 closely corresponded to the latter part of CCCN heading Number 68.04. In this connection he referred to the Chapter notes at the beginning of Chapter 68 of the CCCN. Chapter notes I(e) states that this Chapter does not cover "tools or parts of tools, falling within Chapter 82". Shri Tayal argued that this clearly shows that tools or part of tools could also have been covered under Chapter 68, but overlapping had been avoided by this

Chapter note. There were no such Chapter notes in the Central Excise Tariff, and at the relevant time Item 51A for tools did not exist. He submitted that in such circumstances "diamond tools" which satisfied the definition of grinding wheels in Item 51 were rightly classifiable under that heading.

13. Shri Tayal also drew our attention to the Explanatory Notes to the CCCN, under heading 68.04. In these notes, among the materials of which grinding wheels etc. must be made, diamond has been included.

14. As regards the reference to the Indian Standard Specifications, Shri Tayal submitted that such specifications were basically meant for control of quality and could not be taken to constitute a definition for Central Excise purposes. Regarding the Chandigarh Collectorate Trade Notice, Shri Tayal argued that this was issued at a subsequent time and with reference to a different tariff item and should not be relied upon for the purposes of classification at a previous time when Tariff Item 51A did not exist.

15. We have carefully considered the arguments advanced by both sides.

We observe that although from 1-3-1974 the Central Excise Tariff has a separate Item No. 51A covering tools, this item did not exist at the material period, whereas the Item No. 51 which inter alia covers "grinding wheels" did. As seen from paragraph 6 above, the description and scope of the expression "grinding wheels" was very wide. It is significant that the appellants have not denied that their "diamond tools" perform basically the same function as "grinding tools". They have however urged that Item 51 does not make a reference to "diamond wheels" and that a diamond is not a natural stone. As pointed out by Shri Tayal, the fact that it was found necessary specifically to exclude from Chapter 68 of the CCCN tools falling within Chapter 82 shows that there would otherwise have been overlapping between these two Chapters, and that some goods which could be described as tools could also be described as grinding wheels etc. (The reference to the use of diamond in making grinding wheels is also relevant). Reading Central Excise Items 51 and 51A together, as they now exist, it might be concluded that the latter item would be more specific in respect of the goods manufactured by the appellants. However, this does not mean that during the period when Item 51A did

not exist, the same goods could not have been covered under Item 51. In fact, during the material period, it had only to be seen whether the description of Tariff Item 51 could cover the goods in question. Considering the very wide scope of this item we see no reason to disagree with the conclusion of the lower authorities that the appellants' goods were covered by it.

16. The reference to the Indian Standard Specifications does not help the appellants' case. To begin with, they have not indicated any specific parts of the specifications which support their claim.

Secondly, it is a well-known fact that the ISI does issue more than one specification for different sectors of the same industry or different varieties of the same goods. Therefore, the fact that there is one specification for grinding wheels generally and other for diamond wheels, would not by itself show that two are mutually exclusive, as it can well mean that diamond wheels are a species of grinding wheels.

17. In these circumstances, we find that the view taken by the lower authorities in this case, classifying the goods under consideration under Item 51 of the Central Excise Tariff as it was then, was correct.

We accordingly reject the appeal.

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