

Collector of Central Excise Vs. Inex Engine Valves

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-20-1989

Reported in : (1990)(25)ECC238

Appellant : Collector of Central Excise

Respondent : inex Engine Valves

Judgement :

1. This is an appeal directed against an Order dated 12th September, 1984 passed by the Collector of Central Excise (Appeals), Bombay which has been preferred by Collector, Central Excise, Pune by which the Collector (Appeals) had set aside the Order dated 7th June 1983 passed by the Assistant Collector of Central Excise, Pune V Division classifying goods manufactured by the respondents herein namely "Pin (Injection Timer Mounting)" under Item 52 of Central Excise Tariff. The facts in brief are the respondents are manufacturers of products named above which were earlier classified by the Department under Central Excise Tariff Item 68 covering goods not elsewhere Central Excise in the Tariff. The respondents filed classification list effective from 6th August 1982 claiming the classification of item namely "Pin (Injection Timer Mounting)" under Item 68 of Central Excise Tariff. The Assistant Collector felt that the product is classifiable item Tariff Item under 52 of Central Excise Tariff. Hence he issued Show Cause Notice to the respondents for classifying the products under Item 52 and confirmed this classification by his Order dated 7th June 1983. The respondents were aggrieved by this Order which they challenged before the

Collector (Appeals), who set aside the Assistant Collector's Order, and held that the product was classifiable under Item 68 of Central Excise Tariff and not under Item 52 of Central Excise Tariff. Item 52 of Central Excise Tariff covers inter alia bolts and nuts of base metal or alloys thereof produced with the aid of power. The Collector of Central Excise, Pune being aggrieved by the said Order of Collector (Appeals) has preferred the present appeal.

2. Shri K.D. Tayal the learned Senior Departmental Representative appeared for the Appellant Collector and submitted that the Assistant Collector in this case determined the classification after visiting factory of M/s. TELCO for whom the goods were manufactured by the respondents and had adopted the classification under Item 52 of Central Excise Tariff for the goods manufactured by the respondents after issue of Show Cause Notice and considering their defence thereon and after holding that Pin is nothing that a special type of fastener which is designed to prevent axial movement of the camshaft gear and thus it is nothing but special type of fastener used to fastening camshaft with camshaft gear. The learned Senior Departmental Representative pointed out that the Collector (Appeals) had erred in ignoring the functional nature of the item and merely depending on commercial parlance. The learned Senior Departmental Representative has placed reliance on correspondence between respondents herein and M/S. TELCO to whom they are supplying the items wherein the fact that the item is essentially a fastener is brought out. He further referred to the drawing of the item produced which indicates a torque function which is that of a fastening. Therefore since the Tariff Item 52 of Central Excise Tariff covers such fasteners, and irrespective of the fact that the items are specially designed for motor vehicles, and are not available commercially with hardware traders, yet the classification thereof under Item 52 of Central Excise Tariff is justified in view of the specific Tariff description and their essential function as a fastener.

Shri Tayal relies for this proposition on the decision of the Bombay High Court in the case of M/s. Simmonds Marshal v. Assistant Collector, Central Excise - 1985 (22) E.L.T. 378 (Bom.) wherein the High Court held that Nylo Self Locking Nut is basically a fastener with special property of holding fast and as such would be classifiable under Item 52 of Central Excise Tariff. The High Court has come to the

conclusion after having regard to the facts that these nuts are ordinarily stocked in the Auto Spare Parts Market and are used on special application on motor vehicles. He also relied upon further decision by the Tribunal which followed the above High Court decision in the case of *Fit Tight Nuts & Bolts v. The Collector of Central Excise* - 1985 (21) E.L.T. 717 (Tribunal). Similarly in the case *Shri Veera Raghava Industries v. Assistant Collector of Central Excise* -1989 (42) E.L.T. 479 it has been held that studs and eye bolts were classifiable under Item 52 of Central Excise Tariff even though it has use as a pedal break adjuster in gland valves.

3. Shri B.K. Kulkarni the learned Chartered Accountant appearing for the respondents submitted that Injection Timer Mounting Pins produced by the respondent is fixed to the camshaft and camgear, and assembly of camshaft and camgear and the pin is done in such a way that injection of the fuel will be timed. He stated that this is different from an ordinary fastener. Further in commercial parlance the 'Pin' is known 'Pin-ITM' and it is not a nut or bolt, and in the market it can only be purchased by describing it as such. Only because the Pin-ITM is threaded it cannot be called a bolt. The learned Chartered Accountant contended that while all bolts are fasteners all fasteners are not bolts.

4. We have given careful consideration to the submissions made by the learned Senior Departmental Representative and the learned Chartered Accountant. The issue is whether the excisable goods in question namely Pin (Injection Timer Mounting) is classifiable under Item 52 of Central Excise Tariff which covers bolts and nuts threaded or trapped or screws of base metal in or in relation to the manufacturer by which any process is ordinarily carried on with the aid of power. The respondent's case is that it will not fall under this item but is covered under Item 68 of the Central Excise Tariff covering goods not elsewhere specified in the Tariff. They have placed heavy reliance upon the fact that Pin-ITM is specifically designed for use in motor vehicles in assembly of camshaft and camgear in such a way that the injection of fuel will be timed, and also that commercially it is available only with motor vehicle parts dealers and is therefore not mere fastner. However, we find from the correspondence between M/s.

Telco, to whom they supply these items, and the respondents that in their letter dated 3rd July 1983 to the respondents M/s. Telco said with reference to Assistant Collector's Show Cause Notice to the respondent on the classification of the Timer Mounting Pin, inter alia, that internal threads are present on the camshaft to which the Timer Mounting Pin is tightened for retaining the camshaft assembly to camshaft. Further, the letter from the Standardisation Department of Telco, which is enclosed to the Telco letter referred to above, clearly stated that the subject pin performs the function of fastening the gear with camshaft, and that it has been provided with special contructional features to suit its application. We find that in the Simmonds Marshal case, decided by the Bombay High Court and relied upon by the learned Senior Departmental Representative, the Nylo Self Locking Nuts, classification of which was decided by the Court, were also stated to be manufactured as per the specification and to be used for motor vehicle parts which were ordinarily stocked in Auto Spare Parts Market and were not available in the ordinary Hardware Market, and also as having special engineering features. Yet Hon'ble High Court concluded that these Nylo Self Locking Nuts would be classifiable under Tariff Item 52 of Central Excise Tariff and not under 68 of Central Excise Tariff. The Court further held in that case that Nylo Self Locking Nuts had additional function of locking, but that this function is in addition to the function as fastener, but that essentially the product was nothing but a nut. We find on consideration on submissions made before us and on perusal of the functional utility of the Pin-ITM in question that argument similar to that of respondents herein did not find favour before the Bombay High Court, and in the present case also, even as per the understanding of the respondents, as evident from their correspondence with M/s. Telco referred to above, the essential function of the pin is that of a fastener although in addition to that it may have a function as a timer, and, in this view of this matter, we find a lot of force in submissions of learned Senior Departmental Representative and the case law cited and the Departments appeal is well-founded, and accordingly impugned order of Collector of Central Excise (Appeals), Bombay is set aside, and Departments Appeal allowed.