Precision Fasteners Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-17-1983

Reported in : (1984)(15)ELT188TriDel

Appellant : Precision Fasteners 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. It arises out of the combined order-in-appeal Nos. 286/77 and 287/77 dated 20-4-1977 passed by the Appellate Collector of Customs and Central Excise, Bombay, which relates to two orders-in-original passed by the Assistant Collector of Central Excise, Division VI, Bombay. Appeal No.ED(SB)(T) A. No. 163/77D, arising out of the same order-in-appeal of the Appellate Collector, and relating to the Assistant Collector's order-in-original No. V(52)l 5-17/76/1268 dated 27-1-1977, has been disposed of separately, as having been withdrawn. This appeal arises out of the order-in-original No. V(Misc.)Coll/19/75-Pt. II-1375 dated 29-1-1977, dealt with in the same combined order-in-appeal of the Appellate Collector.

2. This case relates to the question of excisability with reference to Item 52 of the Central Excise Tariff Schedule of certain goods manufactured by the appellants. These comprise four items, which they have designated as follows ; - It was held

by the authorities below that these fell under the said Item 52, as "bolts and nuts, threaded or tapped, and screws...". As against this, it was the contention of the appellants that the goods were ' 'high tensile industrial fasteners", and that these were not classifiable under Item 52, as they were specially designed for use in automobiles and performed functions apart from the function of fastening.

3. Appearing for the appellants, Shri Taraporevala argued the matter at length, and made several submissions. He pointed out that in a classification list dated 11-10-1974, the appellants had attached a list of various goods manufactured by them, including the four in question. This classification list was approved on 28-8-1975, with the observation that various articles mentioned in the list (including the four now under consideration) were "non-excisable under T.I. 52". (In passing, it must be stated that the photocopy of the classification list filed by the appellants is very indistinct, and much of what has been stated above is based on Shri Taraporevala's statements made at the Bar). Thereafter, there was further correspondence and by a letter dated 13/16-8-1976, the Assistant Collector modified the approval accorded earlier in respect of the four items mentioned above and held that they attracted duty under Item 52. This was followed up by a letter dated 20-8-1976 from the Superintendent of Central Excise, Range No. VI, Thana Division, titled "Notice to show-cause-cum demand under Rule 10 of C. Ex. Rules, 1944", requiring the appellants to show cause why an amount of Rs. 5,32,165.65, calculated as the differential Central Excise duty, should not be recovered from them. On an appeal being made, the Appellate Collector held that the Assistant Collector's order was not a speaking order and he therefore remanded the matter to the Assistant Collector for de novo proceedings. Thereafter, the Assistant Collector passed a further order dated 29-1-1977. In this order the Assistant Collector referred to the contention of the appellants that the four products had definite functional utility and fastening by way of threads was a secondary function. The appellants had also stated that the Assistant Collector had no jurisdiction to review the decision of the earlier Assistant Collector and re-classify the above four products. Rejecting these contentions, the Assistant Collector held that the products performed the function of fastening alone and after being so fastened they had no other functions to perform in the automobile vehicles in which they were used. He recorded that he had examined the samples

of the products and his scrutiny confirmed that the products were meant for fastening two or more parts of an automobile machinery (sic). He confirmed the notice dated 20-8-1976 issued by the Superintendent. The appellants went in appeal against this second order. The Appellate Collector held that the basic function of the goods was to fasten various machinery parts. The only difference between normal fasteners and these fasteners was that they were made to the definite specifications on the basis of the requirements of each machine and that they were made out of specific raw material and alloys, so as to impart specific engineering advantages. However, this particular specialised requirement did not take away their basic nature and characteristics as bolts and nuts.

They were basically fasteners with specific engineering advantages and hence rightly classifiable under Tariff Item No. 52. With these observations, he rejected the appeal.

4. Although Shri Taraporevala had argued at considerable length, it would be sufficient, for reasons which will appear below, to deal only with the two main points advanced.

5. Shri Taraporevala placed considerable reliance on a decision of the Bombay High Court relating to windscreens for motor vehicles, reported at 1982 E.L.T. 237 (Bom.). (The title of the case has been shown therein as Svadeshi Mills Company Limited v. Union of India and Ors., but Shri Taraporevala staled that this was an error and that the petitioners were actually Maharashtra Safety Glass Works). In that case the question was whether windscreens of motor vehicles were classifiable under Item 23A as "glass and glassware" as claimed by the Department, or under Item 34A as "parts and accessories of motor vehicles" as claimed by the appellants. The High Court held that as between the two entries, they would have no hesitation in holding that it was entry No. 34A which was the specific entry and not entry No.23A. Apart from this, they also referred to the understanding of the commercial community, and stated that the test to be applied was as to whether windscreens could be purchased from a glass or glassware shop or whether they could be purchased only from dealers in motor par's. On the basis of these considerations they held that in commercial parlance a windscreen

is an entirely different commercial commodity identified independently from glass or glassware. In the result, the High Court set aside the decision of the Excise authorities classifying the windscreens under Item No. 23A.6. Shri Taraporevala contended that this decision applied squarely to his case. He contended that each of the products was made to the order of a manufacturer of automobile engines, for a specific use, as seen from the documents submitted to the Central Excise authorities. Shri Taraporevala cited various authorities for the proposition that the onus was on the Department to prove that the goods came within the scope of the entry under which they were sought to be taxed.

7. On the other argument namely that the Assistant Collector in this case could not review an order passed by his predecessor, Shri Taraporevala cited the judgment of the Madras High Court in the case of Indian Organic Chemicals Ltd. v. Union of India, reported at 1983 E.L.T. 34. His attention was drawn by the Bench to the judgment of the Delhi High Court in the case of J.K. Synthetics Limited and Another v.Union of India and Ors., reported in 1981 E.L.T. 328 (Del.), in which the High Court has comprehensively dealt with the circumstances in which an authority can review an assessment decision previously taken Shri Taraporevala contended that this case was not covered by any of the circumstances set out in paragraph 15 of the said judgment, which postulates that there should be fresh evidence, or fresh facts, or a change in the process of manufacture, or a modification of the relevant Tariff entry, or a pronouncement of the Supreme Court or a High Court.

8. Replying to Shri Taraporevala, Shri Tayal first took up the question of the competence of the Assistant Collector to review a previous decision on assessment. Shri Tayal strongly relied on the judgment of the Delhi High Court in the case of Bawa Potteries, Mehrauli, v. Union of India and Another, reported in 1981 E.L.T. 114 (Del.). He relied on the finding in that judgment that a power of review is inherent in the provisions of Rule 10 of the Central Excise Rules, and argued that a review was permissible if the appropriate authority came to the conclusion that the earlier assessment was wrong. He also relied on the judgment of the Andhra Pradesh High Court in the case of Southern Steels Limited, Hyderabad v. Union of India and Ors., reported in 1979 E.L.T. 402, in which it has

been observed that even though the Department had over a prolonged period not questioned the position taken up by the assessee that his goods were not dutiable, this would not prevent them from levying duty whenever they came to the conclusion that a description in the classification list was not correct and that according to the correct description duty was leviable.

9. Shri Tayal then referred to Shri Taraporevala's arguments, based on the Bombay High Court judgment relating to windscreens, and the implied argument that in this case Item 34A was more specific than Item 52. He pointed out that at no earlier stage had there been any claim that the goods were classifiable under Item 34A, but exempt from duty by virtue of the exemption notification under that Item. If that had been the position of the appellants they should have made appropriate entries under Item 4 of their classification list, where there was a provision to show the applicable Central Excise Tariff Item as well as particulars of relevant notifications under Rule 8 having a bearing on the rate of duty. Under this part they had made the endorsement "Nil".

Their stand clearly was that their goods were not excisable at all. (It should be observed that when the classification list was filed there was no residuary item No. 68 in the Central Excise Tariff Schedule, and therefore any goods which did not fall under one or other Tariff Item were non-excisable). It was also in this sense that their classification list was understood by the Central Excise authorities.

Shri Tayal stated that nowhere in the proceedings before the Assistant Collector or the Appellate Collector or in their Revision Application (which has been transferred to us) is there any claim that the goods were classifiable under Item 34A but exempt from duty. He submitted that the appellants should not be allowed at this stage to seek classification under Item 34A, with the benefit of the exemption notification. Such a plea involved a mixed question of law and fact and was fully available to them earlier but was not raised. He further submitted that if their claim was that their goods came within the scope of the exemption notification, the onus was on them to prove that this was so.

10. Shri Tayal also submitted that the material on record did not clearly indicate what were the additional functions other than that of fastening which were claimed

for the goods, or the special engineering qualities attributed to them. Further, with reference to Shri Taraporevala's argument that each of the articles was specially made to be supplied to a particular manufacturer of motor vehicles, Shri Tayal referred to the statement attached to the classification list and pointed out that in respect of cylinder stud bolts and long studs there was no indication of the name of the manufacturer to whom they were to be supplied (unlike some other items included in the list). This showed that the appellants had not even furnished material to support their basic plea that the goods were specially made for a particular use.

11. As regards the question of time bar, Shri Tayal stated that he was handicapped as this had not been the subject of decision by the lower authorities. He conceded that in this case there had been no suppression or clandestine removal but even then the time limit of one year as then applicable under Rule 10 read with Rule 173J would be applicable.

12. Replying to Shri Tayal, Shri Taraporevala reiterated that the Assistant Collector did not have the power to review his predecessor's decision. He also observed that the judgment of the Delhi High Court in the case of Bawa Potteries was earlier than the judgment in the case of J.K. Synthetics and the former judgment did not go into the question of the Assistant Collector's power of review.

13. As regards the point that no claim had been made for classification under Item 34A, Shri Taraporevala stated that this had not been mentioned in express terms. Nevertheless, since the appellants had claimed that Item 52 was not applicable, the Tribunal would still have to go into that question. He submitted that even if a very strict "technical" view was taken that Item 34A could not be considered, Item 52 should still to be taken as ruled out, on the ground that the goods were not exclusively used as fasteners.

14. We have given our careful consideration to the arguments advanced on both sides. So far as the question of the Assistant Collector's power to review an earlier decision is concerned, we find that the case is squarely covered by the Delhi High Court judgment in the case of Bawa Potteries, which has particular relevance to us, as we are situated in Delhi. In this case the successor Assistant Collector

being tentatively of the view that his predecessor had not fully taken into account relevant facts, had invoked Rule 10 and thereafter reviewed the earlier decision, after issuing a show cause notice and complying with the principles of natural justice. We do not find that there is anything in the judgment in the case of J.K. Synthetics which is inconsistent with the judgment in the case of Bawa Potteries. The latter judgment also clearly permits the review of an assessment decision taken earlier, but stresses that this should not be done capriciously, but only for cogent reasons. One of the reasons mentioned is that there should be at least a suggestion that while arriving at the conclusion of the earlier year certain material facts or provisions had not been considered and that if they had been considered a different view might have been taken. We, therefore, find that the Assistant Collector's order cannot be assailed on the ground that it was without proper authority. We also find that the show cause notice-cum-demand of the Superintendent under Rule 10 was issued on 20-8-1976, that is, within one year of the date of approval of the classification list (viz. 28-8-1975) and therefore within time under Rule 10 as then applicable.

15. We have then to consider the merits of the classification. We find substance in the submission of Shri Tayal that the appellants had never specifically claimed that their goods should be classified under Item 34A, with the benefit of the exemption notification thereunder. If Item 34A is kept out of consideration, the only question would be whether or not the goods could be considered as bolts and nuts, etc. within the meaning of Item 52. It would then become relevant to consider whether the Assistant Collector and the Appellate Collector were right in holding that the goods had no real function to perform apart from that of fastening. We feel, however, that it would not be proper for us to take a narrow view and completely rule out consideration of Item 34A.Although this case is not exactly the same as the windscreen case, there are weighty observations in the Bombay High Court judgment on that case which would be relevant to the present case. The question whether Item 52 or Item 34A was more specific and appropriate in relation to these goods would also require careful consideration in the light of all the facts and evidence. We consider that in the interests of justice the question of possible classification under Item 34A should also be examined. Since, however, this plea was not specifically raised at the earlier stages. It was not dealt with by the

authorities below, and it would not be proper for us at the stage of second appeal to embark on an examination of this basic and factual question. We, therefore, consider that it would be appropriate to remand the case to the Assistant Collector for a de novo determination, taking into account the alternative classification under Item 34A. We accordingly set aside the orders of the authorities below and remand the case to the Assistant Collector for readjudication. The readjudication should be completed within six months from the date of receipt of our order.