

Metal Extruders (i) Pvt. Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-23-1983

Reported in : (1984)(16)ELT148TriDel

Appellant : Metal Extruders (i) Pvt. Limited

Respondent : Collector of Central Excise

Judgement :

1. The question for decision in this appeal to the Tribunal is whether the demand of duty from the appellants in respect of Brass Rods & wires for the period 23-5-1979 to 30-4-1980 and 3-5-1980 to 30-6-1980 classifying them under T.I. 68 of C.E.T. made by the Assistant Collector of Central Excise by his order dated 28-1-1981 and upheld by the Collector of Central Excise (Appeals), Bombay by his order dated 23-2-1983 is correct.

2. The appellants are holders of L-4 Licence No. I/Copper/77 for the manufacture of products falling under Copper and Copper Alloys Item No.26A of C.E.T. in their factory at Plot No. A-142/149, Road No. 23/24, Wagle Industrial Estate, Bombay Thane.

The Superintendent of Central Excise, Thane issued show cause notices dated 8-7-1980 for the period 23-5-1979 to 30-4-1980 calling upon the appellants to show cause to the Assistant Collector of Central Excise, Thane why duty of Rs. 5,35,755.64 be not realised from them. A similar notice dated 21-8-1930 for the period 1-5-1980 to 30-6-1980 for an amount of Rs. 84,040.00 was also issued to

the appellants to show cause to the Asstt. Collector.

(i) They have failed to file a proper classification list for their products copper alloys and brass wires of diameter 10 mm and below correctly classifiable under T.I. 68, a contravention of the provisions of Rule 173B of the Central Excise Rules, 1944 ; (ii) they have failed to determine the duty due on the goods and to remove them on payment at the appropriate rate under T.I. 68, a contravention of Rules 173F and 173G(2) of the C.E. Rules, 1944 ; (iii) they have failed to declare the proper and full description and the fact regarding the exact dimensions of the copper alloys and brass round rods in their classification list No. 1 of 1979 and thus suppressing the fact of manufacture and clearance of copper alloys and brass wires of diameter 10 mm and below and removing these copper alloys and brass wires as falling under sub-item (ia) of item 26A of CET as 'Rods' without payment of duty claiming exemption from payment of duty under Notification No. 119/66, dated 16-7-1966 as amended, a contravention of Rule 9 (1), and (iv) they have also failed to pay duty under T.I. 68 at the appropriate rate on the clearance of copper alloys 'L' sections in the month of June, 79 and cleared the same as copper alloy rods without payment of duty under sub-item (ia) of Item 26A of CET as exempted under Notification No. 119/66, dated 16-7-1966 as amended, and without filing proper classification list, a contravention of Rule, 173B, 173F, 9 (1) and 173G (2) of the Central Excise Rules, 1944.

3. The appellants showed cause and the Assistant Collector by his order dated 24-1-1983 upheld the demand. The order was upheld in appeal by Collector of Central Excise (Appeals), Bombay by his order dated 23-1-1983.

4. In the grounds of appeal, it is urged that Collector of Central Excise (Appeals)' findings that the 'Pieces' cannot be equated with 'Straight lengths' is wrong because in the delivery challans and invoices bundles and pieces were mentioned. Wires cleared under Item 68 of C.E.T. were referred in the delivery challans and invoices in bundles and pieces indicate rods in straight length. On the basis of dimensions, number of pieces, number of bundles, net weight in kg. of brass rods or wires, the length of such rods or of wires in feet can be readily calculated. Two statements in support of this contention are submitted. Brass rods which are

stated in the invoices mentioned in Exhibit-XII of the grounds of appeal were in straight length and on the same Excise duty in terms of two tariff advices Nos. 54/79 dated 27-11-1979 and C.B.E. & C's letter No. 138/12/80-CX. 4/7, dated 1-11-1980 had been paid. It was not necessary to indicate in the classification list whether rods were of 100 mm or less diameter. This necessity arose only after the issue of Tariff Advice dated 1-11-1980.

The appellants had filed proper classification list and there was no wilful misstatement or suppression of facts in the Classification lists. All the clearances were made on proper excise documents and therefore, there was no contravention of Rule 9(1) or of any other rule of Central Excise Rules, 1944. Time limit of 5 years could not be applied in respect of the demands and the time limit applicable was 6 months. On these grounds it is urged that the order in appeal should be set aside.

4. At the hearing of the appeal, Sh. L.C. Mittal, learned Consultant for the appellants explained that brass rods of 10 mm diameter are assessable under item 26A or item 68 of C.E.T. The appellants on the basis of certain decisions of the Government of India filed classification lists in respect of copper and Brass rods at nil rate of duty under Item 26A(la) of C.E.T. read with Notification No. 119/66-CE, dated 16-7-1966. Classification List No. 1/79 was approved on 18-5-1979 and Classification List No. 2/79 was approved on 29-12-1979 by the Assistant Collector of Central Excise, Thane. The Excise authorities did not allow the appellants clearance of the copper and brass rods at nil rate of duty under Item 26A(la) of C.E.T. read with Notification No. 119/66-CE, dated 16-7-1966 but insisted that appellants should pay duty at 8% ad valorem under Item 68 of CET. Appellants contended that M/s. Alco-bex Metals Private Ltd. Jodhpur and M/s. Bhandari Metals Corporation, Bangalore were clearing such products on payment of nil duty. The appellants therefore, made representations dated 20-11-1979 and 62-11-1979 to the Central Board of Excise & Customs, New Delhi. The Board then issued Tariff Advice No. 54/79 dt. 27-11-79 explaining 'Copper and Brass Rounds Rods, Copper and Brass Square and Hexagonal Rods and Brass Rods in coil form' will be classifiable under Item No.26A(la); whereas copper and brass Sections and profiles and brass wires will be classifiable under Item 68 ibid. Later the Board by their letter dated 1-11-1980 further explained that keeping in view the

practice in trade wires upto 10 mm diameter, the distinction between wire and rods may go by the criterion of coil form or straight length.

Earlier Tariff Advice was modified by this letter. Classification list filed by the Appellants was verified and approved on 30-12-1980.

Meanwhile two show cause notices, as already been mentioned above, were issued to the appellants in 1980 and their clearances stopped. The classification lists were approved after the issue of tariff advices.

At the material time, it was not necessary to indicate in respect of brass rods of less than 10 mm. diameter whether they were in coil form or in straight length. This became necessary only after, Board's letter dated 1-11-1980. From the documents of the appellants, It is possible to work out as to how much quantity was in coil or how much in straight length pieces indicate straight length and bundles indicate rods in coil form. There was thus no suppression. The time limit of 5 years was not applicable as there was no suppression or mis-statement but time limit of only 6 months was applicable. The whole claim was, therefore, time barred.

5. On behalf of the respondent, Shri V. Lakshmi Kumaran, SDR submitted that in the first classification list says about products above 10 mm.

but the appellants did not mention the manufacture of products of less than or upto 10 mm diameter. In the second classification list, there was mention of brass rods in coil forms but no mention of diameter of brass rods or there being any product in straight length. There was thus clearly suppression. He submitted that appellants manufactured and cleared brass rods of less than 10 mm diameter which were classifiable under item 68 of C.E.T. On the other hand appellants' contention is that they were classifiable under Item 26A(la) of C.E.T. Shri Lakshmi Kumaran stated that the goods in question were manufactured by extruding process and were less than 10 mm thickness. These can not be considered as wire rods under T.I. 26A(la). These would more appropriately fall under T.I. 68 even if they were technically not called as 'wires'.

6. The dispute before us is limited to rods of 10 mm diameter. From the reading of Tariff Advice and Central Board of Excise & Customs' Circular, it appears that brass wires upto 10 mm if in coil form would be classifiable under Item No. 68 and if in straight lengths would be classifiable under sub-item (1a) of Item 26A of C.E.T. While the Appellants' claim that rods in pieces were in straight length as distinguished from coils and therefore classifiable under sub-item (1a) of Item 26A, the respondents claim that the appellants in their classification list had not indicated anything to show from which it may be inferred that these pieces were in straight length and therefore, they could not be classified under Item 26A(1a) and the goods in dispute should be classified as wires under Item 68.

The dispute really turns on facts. The appellant could not convince the Assistant Collector of Central Excise and the Collector of Central Excise (Appeals) that the goods shown as pieces in the invoices were in straight length. We do not think that we should interfere with concurrent findings of the fact by the two authorities when the appellants had failed to establish that pieces meant straight length.

According to ISI specifications, wire rods of copper should have thickness of more than 10 mm. In this case the product in question is of thickness 10 mm or less. Hence they are not classified under Item 26A(1a). Accordingly, item 68 of the CET is more appropriate for these goods.

On going through the classification list, there can be no doubt that the appellants had not given necessary particulars by which the Excise authorities could have come to conclusion that the appellants were also manufacturing product which was classifiable under Item 68. The appellants did not mention Item 68 or even the fact that they were manufacturing brass rods upto 10 mm diameter. This clearly shows that there was suppression of facts on the part of the appellants. Besides, no penalty has been imposed against the appellants and only duty has been demanded from them. Once it is held that there was suppression of facts on the part of the appellants, there is no dispute that the demand made from the appellants of duty is within time.

Considering all the facts and circumstances of the case, no interference with the orders passed by the lower authorities is called for. We, therefore, dismiss the

appel.

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