

Collector of C. Ex. Vs. Associated Strips Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-20-1990

Reported in : (1990)(50)ELT490TriDel

Appellant : Collector of C. Ex.

Respondent : Associated Strips Pvt. Ltd.

Judgement :

(i) Whether the 'Steel welded stepped tubular electric poles' manufactured by the appellants fall under Tariff Item (T.I.) 26AA or T.1.68 of the Central Excise Tariff as it stood on 9th November, 1982.

(ii) If it fell under T.I. 68, whether the demand of duty of Rs. 16,21,846.98 (BED) plus Rs. 12,394.85 (SED) for the period 1-4-1979 to 8-11-1982 is liable to be paid by the respondents demanded against the show cause notice dated 18-12-1982.

2. In order to appreciate the above two questions certain facts are set out as below :- 2.1. The respondents had declared, inter alia, manufacture of "Stepped pipes and Tubes (Tubular Poles) welded in three sections after requisite jobbing" and claimed exemption under Notification 69/73-C.E., dated 1-3-1973 by filing a declaration under Notification 111/78, dated 9-5-1978. The department alleged on the basis of process of manufacture commercial parlance and incorrect declaration that there has been evasion of duty in the instant case. The goods were liable to classification under T.I. 68 and because of suppression of correct nomenclature, full manufacturing activity of the stepped pipe and tubes larger period of 5 years is

rightly invokable.

2.2. On due adjudication, the Collector held in favour of the respondents that the goods were classifiable under T.I. 26AA(iv).

Accordingly, no duty was held to have been evaded by the respondents.

His findings in this connection are set out below :- "In brief the case of the departments is that steel welded stepped pipes and tubular poles manufactured by the party are not "Pipes and Tubes" classifiable under T.I. No. 26AA(iv). These have neither been designed for use as pipes and tubes nor can they qualify the test of pipes and tubes as for their quality they are incapable of handling a liquid or a gas flow at a considerable pressure without collapsing nor these are marketed as pipes and tubes, The party on the other hand has stated that dispute regarding classification of electric poles as 'Pipes & Tubes' under T.I. No. 26AA was settled in 1962 and in support they have referred to the Board's instructions and the Notification No. 41/63-C.E. issued in 1962-63 respectively. They have further stated that the legal position once taken cannot be changed until and unless the stand already taken is declared to be *ultra vires*.

In the instant case classification of steel welded stepped tubular poles being manufactured and marketed as such is involved. The party had drawn inspiration from the budget instructions and notification issued in 1962-63 respectively under T.I. No. 26AA. As to whether a particular item falls within a particular entry or not, the authorities have to find out on the basis of relevant facts. The proper test for classification of goods under appropriate specific entries and sub-entries is now judicially well settled. For a manufactured article to fall under a particular item it should be shown to be known by that description to the consumer and commercial community. It is clear that meanings given to article in fiscal statute must be as people in trade and commerce, conversant with the subject generally treat and understand them in the usual course. The test is being known in the market must be satisfied when excise is sought to be levied.

What is being manufactured and invoiced by the party is "Steel Welded Stepped Tubular Poles" and claimed its classification under T.I. No. 26AA as "Pipes and

Tubes". In the trade parlance these are known to be Electric Poles. Telegraphic, Telephonic, Electric Lighting and transmission poles are classifiable under T.I. No. 26AA from its very inception as per the instructions issued by the Board immediately after the introduction of this item into Central Excise Tariff in 1962. Statutory support for this classification is to be found in serial entry 2 of the table appended to Notification No. 41/63 dated 1-3-1963. Prima facie, therefore, the Central Board had purported to include telegraph and electric poles within the Item 26AA. Although the said Notification and CBR instructions could not alter the meanings of words in the statute, yet it could be looked upon as an aid to interpretation - indicating the relevant classification of the goods. Any change in the department's view, I feel, should be duly notified, clarified or made aware to the trade.

I therefore, feel obliged to hold that the "Electric Poles" manufactured by the party are 'Pipes & Tubes' and the same are classifiable under T.I. No. 26AA. Steel pipes and tubes are exempt from payment of duty and the licencing control vide Notification Nos. 69/73-C.E., dated 1-3-1973 and 111/78 dated 9-5-1978 respectively. I accordingly order that proceedings against M/s.

Associated Strips (P) Ltd. and M/s. Haryana Fabricators Faridabad be dropped."

2.3. This appeal against the Collector's order has been filed by the department on the orders of the Central Board of Excise and Customs exercising its powers under Section 3S-E of the Act. The order of the Board has more or less set out the same pleas as were mentioned in the show cause notice to the respondents. In addition, however, it has also drawn attention to a judgment of the Tribunal in the case of MA. Indian Metals & Ferro Alloys Ltd. v. CCE, Bhubaneshwar [19S5 (21) ELT 548 (Tribunal)] . It has been held in the Tribunal's judgment in the said case that the poles have a distinct name, character and use than the pipes and tubes. Generally pipe is understood in trade parlance as one intended for conveying fluids. Pipelines, for example, is considered a long continuous line for piping to carry water from a reservoir, oil from an oil field or to carry solid material. It was, therefore, held that duty on such poles would not be attracted under T.I. 26AA as pipes and tubes and since there was no other relevant heading they would fall under the residuary T.I. 68 w.e.f. 1-3-1975, when it was introduced in the Central

Excise Tariff.

3. In other words, so far as the question of classification is concerned there is already a Tribunal's decision which is against the respondents. This decision has been strongly relied upon by the learned SDR in the instant case but the learned advocate Shri K. Narasimhan for the respondent has attempted to assail the said judgment of the Tribunal on the ground that it did not take into account the well accepted principle of interpretation of statutes that is of contemporaneous exposition. In support of this plea, the learned advocate has relied upon two judgments of the Supreme Court -CCE, Guntur v. Andhra Sugar Ltd. In order to appreciate the Supreme Court's general observations para 7 of 1989 (40) ELT 266 (SC) is extracted below :-Desh Bandhu Gupta and Ors. v. Delhi Stock Exchange, 1979 4 SCC 565 and Varghese v. ITO (1981) 131 ITR 597 that a contemporaneous exposition by the administrative authorities is a very useful and relevant guide to the interpretation of the expressions used in a statute. Considering that the above clarification was sought for at the earliest point of time when a doubt arose as to the scope of the expression used by the statute and given after considering the technicalities of the processes employed in the manufacture of finished leather by the department fully conversant with this branch of trade and in the context of the provisions of this very statute, the terms of the statute can well be construed by reference to such exposition, in the absence of anything in the statute to indicate the contrary.

Indeed, 'such interpretation should be shown to be clearly wrong before it is overturned.'" 3.1. The learned advocate for the respondents has submitted that Notification 41/63 dated 1-3-1963 specifically included telegraph, telephone and electric lighting and transmission poles, within the scope of T.I. 26AA and an exemption was given on such poles under S.No. 2 of the said notification subject to certain conditions. This clearly showed intention of the Government and the authorities competent to levy duty on such pipes. Had they not fallen under T.I.26AA no exemption notification such as 41/63 dated 1-3-1963 would have been issued by the Government. Issue of this notification is an authority for contemporaneous exposition of the scope of T.I. 26AA as it then stood. He no doubt admitted that this Notification 41/63 subsequently rescinded by Notification

21/64 dated 1-3-1964, on being pointed out by the learned SDR but he urges that this rescindment does not have any effect on the scope of T.I. 26AA including such electric poles within its scope. He further urges that a more comprehensive Notification 52/64 was issued which, inter alia, exempted at S. No. 6 of the table appended to the said notification 'Steel pipes and tubes other than seamless pipes and tubes' subject to the condition that if such pipes and tubes were made from skelp, plates or sheets on which the appropriate amount of duty has already been paid.

4. We have carefully considered this plea of the learned advocate for the respondents. We are unable to agree that Notification 41/63 dated 1-3-1963 could be treated as a contemporaneous exposition of the classification of the poles in question for all time to come even after the rescindment of the said notification by Notification 21/64 dated 1-3-1964; nor do we think that Notification 52/64, dated 1-3-1964 was a more comprehensive notification including within its scope the exemption on electric poles. A close reading of Notification 52/64 dated 1-3-1964 shows that it is only in supersession of Notification 41/63 dated 1-3-1963. It does not refer at all to supersession of Notification 41/63 dated 1-3-1963. It is, therefore, possible, though there is no clear evidence to that effect, that rescindment of Notification 41/63 dated 1-3-1963 can be for reasons other than issuance of a comprehensive Notification 52/64 as contended by the learned advocate for the respondents.

4.1. It is also to be noted that the test of commercial parlance in interpreting entries in the Central Excise Tariff was pronounced for the first time by the Supreme Court in the case of Union of India v. Delhi Cloth & General Mills [1963 AIR SC 791]. It is possible that in not including electric poles within the scope of exemption Notification 52/64 the Govt. might have taken into account the said judgment of the Supreme Court because the electric poles were having a name, characteristic and use different from the iron and steel pipes and tubes. We are, therefore, of the view that Notification 41/63 on which the respondents placed a strong reliance about their plea of contemporaneous exposition is by itself not sufficient.

4.2. In order to test their contention the Bench had enquired the practice of assessment subsequent to 1964. Both the sides had undertaken to furnish the practice of assessment of such poles between 1964 and 1975. Despite reminders by the Registry to both the parties no such practice has been furnished. We, therefore, hold that the respondents are not correct in their plea of contemporaneous exposition of the scope of T.I. 26AA vis-a-vis the "stepped pipes and tubes (tubular poles)". Therefore, we have no reason to differ from the judgment of the Tribunal in the case of Indian Metals and Ferro Alloys Ltd. (supra).

4.3. On the basis of facts, as mentioned above, it is, however, doubtful whether a period of five years can be invoked by the department in demanding duty from the respondents who had filed a declaration under Notification 111/78 dated 9-5-1978 claiming exemption Notification 69/73-C.E., dated 1-3-1973. We do not find, as alleged by the department, that there is any material suppression of facts. The words "tubular poles" in the declaration of goods manufactured was sufficient indication of the manufacturing activity of the respondents.

They had also clearly mentioned the claim of the exemption Notification 69/73. In view of these declarations and claim it was incumbent upon the Revenue authorities to satisfy themselves about the claim of the respondents. In these facts and circumstances, therefore, it cannot be held that the respondents had wilfully mis-declared or suppressed any facts warranting invocation of larger period of 5 years. We would, therefore, hold the demand valid for a period of six months and no more.

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