Eagle Spring Industries Vs. Collector of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-20-1990

Reported in : (1991)(53)ELT103Tri(Mum.)bai

Appellant : Eagle Spring Industries

Respondent : Collector of C. Ex. and Cus.

Judgement :

1. This is an appeal directed against the order passed by the Collector of Central Excise, Bombay, bearing No. GSM 1314/89-BRD dated 20-6-1989, rejecting the appellants' appeal.

2. Brief facts of the case for purpose of disposal of the appeal are that - the appellants are manufacturers of spring assemblies. They had furnished a declaration for availment of the modvat credit in respect of the quantity of the finished product declaring the input as 'leaves for spring' (steel flat), indicating Tariff Heading 7308.60. However, in respect of some of the inputs received by them, the Tariff Heading of the input has been indicated as 7209.20. The Department alleged that they had received the inputs under Tariff Heading 7209.20, which was not declared by them as per the modvat declaration referred to above.

In the proceedings initiated by the Asstt. Collector, modvat credit, in respect of such inputs received under Tariff heading of the inputs 7209.20 was denied and demand for an amount of Rs. 1,80,494.47 was confirmed and penalty of Rs. 200/-

was also imposed. The appellants went in appeal before the Collector (Appeals) who confirmed the order of the Asstt. Collector and rejected the appeal of the appellants. The present appeal is against the aforesaid order.

3. Shri Christian, the learned advocate on behalf of the appellants, took us through the modvat declaration given by the appellants to show that the full and detailed description of their only input has been given. He also produced the true copies of the Gate passes showing the receipt of inputs giving Tariff heading as 7308.60, while in some cases of receipts, the Tariff heading has been indicated as 7209.20. He also referred to both sets of Gate passes to point out that the rate of duty in both the cases remains the same. Hence, there cannot be any mala fide in giving a wrong Tariff heading. He also contended that it is not the case of the Department that full and detailed description of the only input has not been given. Tariff heading and classification of the inputs have been given according to their best understanding and if the Department feels otherwise, it is for them to correct it. Having noticed receipts of the same inputs under a different Tariff heading, they also informed the Department in their letter dated 20-8-1986 prior to the issue of show cause notice requesting for the amendment of modvat declaration to include the Tariff Item No. 7209.20 also in respect of same inputs. Notwithstanding this factual position, modvat benefit has been denied and demand has been confirmed overlooking the fact that part of the demand is time-barred. The penalty has also been imposed, which is totally unjustified.

4. Shri Arya on the other hand contended that it is not disputed that the correct Tariff heading of the input has not been given. When they received inputs under a different Tariff heading, the declaration should not be deemed to cover such inputs and hence modvat credit can be allowed. Since part of the demand is covered within the time-limit, Department should be permitted to enforce this demand within the time-limit.

5. After hearing both the sides, we find that in this case, the undisputed facts are that the appellants are getting only one input i.e., steel flat for manufacturing spring assemblies, which they have declared with detailed description, in their modvat declaration. The inputs suppliers are not under their control and if the

jurisdictional Excise officers there have chosen to classify such steel flats under a different Tariff heading, that does not make the modvat declaration filed by the appellants as incorrect so long as the proper description of the input materials has been correctly given in the declaration.

Moreover, the argument of Shri Christian is that in both the cases the rate of duty remains the same. Hence, no mala fide can be attributed warranting imposition of penalty. In our view, the modvat declaration given, is valid to cover all steel flats of the spring steel quality to make the assemblies. If some of the flats have been classified under a different heading by the jurisdictional officers at the place of origin of inputs, that does not alter the position with regard to validity of the declaration of inputs, so long as the correct description of the input has been give'n and the Tariff heading as per their understanding has been given. It is also not the case of the Department that steel flats received with different Tariff headings are not covered by modvat notification and hence benefit is not eligible. In view of this, the order of confirmation of the demand as well as the penalty imposed are not sustainable on merits. We, therefore, allow the appeal and set aside the orders of the authorities below.