

Collector of Central Excise Vs. R.M. Engineering Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-18-1991

Reported in : (1991)LC68Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : R.M. Engineering Works

Judgement :

1. In the appeal filed by the Revenue, they have sought classification of the products manufactured by the respondents under Tariff Item 68 as against the classification under Tariff Item 25(16) as castings of Iron and Steel, not elsewhere specified.

2. The respondents M/s. R.M. Engineering Works, filed a revised classification list 1/84-85, dated 2-06-1984 for the products manufactured by them Elbows, Tees, Coupling, Flanges, Union, Cross, Nipple, Plug, Cap, Bend, Screw, Flanges, Red Elbow, Red tees, Red socket. They had sought classification under Tariff Item 25(16) claiming exemption under Notification 208/83, dated 1-08-1983 as galvanized cast iron pipe fittings and malleable iron castings of different shapes and sizes. The Assistant Collector has held that the castings after being cleaned and straightened by process of Tumbling, annealing, shot blasting, they are subjected to galvanizing and threading and thereby get converted to pipe fittings and they no longer remain as castings, a total transformation in the characteristics, usage takes place, divesting them from the characteristics of castings and therefore the products would correctly fall under Tariff Item 68.

On appeal before the Collector of Central Excise (Appeals), he held as per the case of the Collector of Central Excise and Customs, Pune v. Vulcan Level Ltd., the Tribunal had decided that merely threading and cutting into pieces of seamless steel tubes and pipes cannot be said to bring into existence a new identifiable product distinct in name, character and use and as such the tubes would remain classifiable under Item 26AA and not Item 68, and applying the ratio, he held the classification under Tariff Item 68 as not correct and allowed the appeal of the respondent.

3. The appellants, in the appeal have stated that the said Collector (Appeals) has based his findings on the Order No. 418/1984-B, dated 14-5-1984 of the Tribunal in the case of Collector, Central Excise & Customs, Pune v. Vulcan Level Ltd. The facts and circumstances in the case of M/s. Vulcan Level Ltd., are not comparable with the facts and circumstances of the present case. The products in the case of M/s.

Vulcan Level Ltd., were pipes and tubes, whereas in the case of the party, the products are fittings for pipes and tubes. The order dated 14-5-1984 of the Tribunal was referred to by the Assistant Collector in para 31 of his Order-in-Original appealed against by the party and it was observed that after cutting and threading the pipes and tubes, the pipes and tubes remained as pipes and tubes in name, character and use.

As against that position the goods in the instant case after machining, tumblasting, annealing, threading and galvanising with zinc had not remained as castings but had assumed different name, character and use.

Even the I.S.I specifications and the orders placed by the buyers, specifically referred to these products as pipe fittings. In fact after subjecting the products in question to the above processes, the products ceased to be castings. Thus the products had undergone such transformation that they no longer remained castings and assumed the shape of fittings for pipes and tubes which are known in the market as such and not "castings". Thus these are classifiable under T.I. 68 of CET only.

4. Shri R.M. Ramchandani, learned SDR, represented the Department's case. At the commencement of the hearing, Shri A. Hidaytullah, the learned Senior Counsel for the respondent observed that the issue involved is already a decided matter, covered by the decision of the Supreme Court, *Bharat Forge and Press Industries (P) Ltd. v. Collector of Central Excise*, reported in 1990 (45) ELT 525 (SC) which has held that pipe fittings, such as elbows, bends, reducers etc., are classifiable under Tariff Item 26AA(iv) of the erstwhile Central Excise Tariff as "pipes and tubes", and not under residuary Tariff Item 68.

This was followed by the decision of the Tribunal in Order E/4/1991-B1.

Kupling (India) v. Collector of Central Excise, Delhi, dated 16-11-1990 reported in 1991 (53) ELT 370 (Tribunal), holding that the identical products as coming under Item 26AA(iv) or 25(15) as the case may be and not under Tariff Item 68. Shri Ramchandani, learned SDR, however, stated that the case under dispute was distinguishable between the aforesaid cases. In the case under reference, the products were castings, which were threaded and did not remain as castings and therefore properly classifiable under Tariff Item 68. The products dealt with in the case of *Bharat Forge and Press Industries*, pipes, fittings were made out of pipes. The appellants purchase steel pipes on payment of duty and cut the pipes and tubes into different sizes, to give them shape and convert them into pipe fittings and he relied on the order of the Assistant Collector on the aspect of manufacture.

5. Shri Hidaytullah, learned Senior Counsel, however, produced the representatives samples of the products manufactured by the respondents being Tees, Bends etc., and claimed that these are pipe fittings and would be squarely covered by the decisions of the Hon'ble Supreme Court and Tribunal vide decisions referred to supra, and he will not now press for the classification under Tariff Item 25(16) as the Supreme Court has already brought them Tariff Item 26AA(iv) and the same falls under Tariff Item 25(15) for the relevant period applicable to their case from 2-6-1984 to 28-2-1986.

6. Considering the submissions made, the order of the Assistant Collector, as can be seen from para 24, has very clearly treated these products as pipe fittings. At that time the issue which was agitating the minds of the Officials of the Department

was that these Iron and Steel castings did not remain as castings but underwent a change after galvanizing and threading and hence went out of the purview of castings and appropriately fell under Tariff Item 68. The Hon'ble Supreme Court has held that these pipe fittings, remain to be pipes and tubes and hence classifiable under Tariff Item 26AA(iv) that the words "all sorts" is comprehensive enough to bring within its fold the pipe fittings. The manner of manufacturing the pipe fittings is not the criteria, and even cast pipe fittings fall under Tariff Item 26AA. "The question before us is whether the Department is right in claiming that the items in question are dutiable under Tariff Entry No. 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item. We do not think this has been done. Looking at Tariff Item 26AA(iv), it encompasses all sorts of pipes and tubes.

It is also clear that it is of no consequence whether the pipes and tubes are manufactured by rolling, forging, spinning, castings, drawing, annealing, welding or extruding. It is true that initially pipes and tubes may be obtained from sheets, billets or bars by various processes, but the process of manufacture of pipes and tubes does not end there. In order to achieve fully the purpose for which the pipes and tubes are manufactured, it is necessary to manufacture smaller pieces of pipes and tubes and also to manufacture them in such a shape that they may be able to conduct liquids and gases, passing them through and across angles, turnings, corners and curves or regulating their flow in the manner required. Smaller pieces of pipes and tubes differently shaped are manufactured for this purpose. They are merely intended as accessories or supplements to the larger pipes and tubes. They are pipes and tubes made out of pipes and tubes. There is no change in their basic physical properties and there is no change in their end-use. There is no reason why these smaller articles cannot also be described as pipes and tubes." The Tariff Item 26AA(iv) as it existed prior to 1-8-1983 referred to pipes and tubes (including blanks therefor) all sorts whether rolled, forged, spun, cast, drawn, annealed, welded or extruded. After 1-8-1983, the Tariff Entry

25(15) was revised to read as "Tubes and pipes and blanks therefor, of iron and steel rolled, forged, spun, cast, drawn, annealed, welded or extruded". The description remained the same, with the exclusion of the words "all sorts". In this respect, the Tribunal in the case of Kupling (India), Delhi v. The Collector of Central Excise, New Delhi in order E/4/1991/B7, dated 21-11-1990 has held that at the time when the Hon'ble Supreme Court was considering the case of classification of pipes and tubes, they were considering only the headings T.I. 26AA(iv) and T.I. 68. Therefore, the sockets as they stood prior to 01-03-1986, will stand classified under T.I.26AA(iv) prior to 01-08-1983, and after 01-08-1983 under T.I. 25(15).

The Tariff Item 25(15) is not a vast departure to the extent that it will not cover the products in question. The omission of the word "all sorts", will not be a deterrent as the Supreme Court has held that small pipes and tubes should also be considered as pipes and tubes in preference to a residuary item.

Therefore, when the Apex Court holds that Tariff Item 68 is not applicable, there can be no alternative proposition that the products which are manufactured by castings, would get classified under Tariff Item 68, as they no longer remain castings. There is no dispute about the fact that what emerges after galvanizing and threading is a pipe fitting. The extract quoted in the Supreme Court's judgment supra which sums up the present situation is very relevant. To quote "To sum up the true position, the process of manufacture of a product and the end-use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff.

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