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Collector of Central Excise Vs. Dewarance Macneill and Company

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-21-1991

Reported in : (1991)(37)LC268Tri(Delhi)

Judge : M T D.C., G Agarwal, J Balasundaram

Appellant : Collector of Central Excise

Respondent : Dewarance Macneill and Company

Judgement :
are correctly classifiable under Item 68 or Item 22F of the erstwhile Central Excise Tariff; and (ii) The demand for differential duty under Item 22F and Item 68 can be demanded under Section 11A for a period of six months prior to the issue of the show cause notice dated 20.5.1983.

2. The facts of the case have been stated in the statement of facts given in the memorandum of appeal filed by the Revenue. In short, the same are as follows: (a) The respondents filed classification list in Form I dated 25.9.1975 to the proper officer for classification of the above mentioned three products under Item 68 of the Central Excise.

Tariff. The classification list was approved by the proper officer and the respondents cleared the goods on payment of duty under the said Tariff Item 68. Subsequently, chemical test of the three products revealed predominance of asbestos fibres in the composition of the said goods. The Department issued a

show cause notice dated 20.5.1983 proposing to re-classify the goods under Tariff Item 22F and asking the respondents to state why the differential duty of Rs. 55,724.07 relating to the period from May, 1978 to April, 1983 should not be recovered from them as the goods were cleared at the lower rate of duty under Tariff Item 68 without disclosing the composition of the products in the classification list. After considering the reply submitted by the respondents, the Assistant Collector of Central Excise, Calcutta XII Division, Calcutta held that the three products were classifiable under Tariff Item 22F based on composition. He also held that as the composition of the product was not disclosed in the classification list, the period of limitation for demanding the duty should be 5 years in terms of the provisions of Section 11A of the Central Excises and Salt Act, 1944.

He confirmed the demand raised in the show cause notice and directed the respondents to file classification list and to take out a licence for the manufacture of the products under Tariff Item 22F. Being aggrieved by the order of the Assistant Collector, the respondents herein filed appeal before the Collector of Central Excise (Appeals), Calcutta. The latter held that out of the three products, Sleeve Packing and Hexagonal Packing Ring were correctly classifiable under Tariff Item 68 and Indurated Asbestos was classifiable under Tariff Item 22F(2). He also held that the re-classification of Indurated Asbestos should be effected from 11.10.1983, the date of the order of the Assistant Collector of Central Excise. The Collector (Appeals) modified the order of the Assistant Collector to the above effect. The Revenue has challenged the impugned order-in-appeal of the Collector (Appeals) in the appeal under consideration before us. The Revenue has contended in the grounds of appeal that the order of the Collector (Appeals) is not tenable inasmuch as the Tariff Item No. 22F(4) lays down that "other manufactures (of Mineral fibre) in which mineral fibres or yarn or both predominate or predominates in weight" would be classifiable under Tariff Item 22F of the Central Excise Tariff. As Asbestos fibre predominates by weight in all the three products, they should be classifiable under Item 22F of the Central Excise Tariff. It has been further contended that since the products in question are covered by the aforesaid description of the Tariff Item 22F(4), they should be classified under that item irrespective of the fact that they may be component parts of instruments/Pumps.

The Revenue has, therefore, prayed that the Collector (Appeals) order may be modified to the following extent: (i) The products Sleeve Packing and Hexagonal Packing Ring are classifiable under Tariff Item 22F. The Collector (Appeals) already upheld the classification of Indurated Asbestos under Tariff Item 22F. (ii) The demand for differential duty under Section 11A is valid for a period of six months prior to the issue of the show cause notice dated 20.5.1983.

3. Shri L.C. Chakravarti for the Revenue and Shri N. Mookherjee for the respondents have argued before us. During his arguments Shri Chakravarti has reiterated the facts and the grounds stated in the appeal. He has further confirmed that the classification list was approved on 27.11.1975 and the show cause notice for re-classification of the three products under Item 22F of the Central Excise Tariff was issued on 20.5.1983. The Assistant Collector passed his order on 11.10.1983. He also reiterated that the demand for duty is valid for six months prior to 20.5.1983. To be more specific, he has argued that the demand for duty is sustainable for the period from 20.11.1982 to 20.5.1983 in terms of Section 11A of the Central Excises and Salt Act, 1944. However, the period covered in the show cause notice was from May, 1978 to April, 1983. In support of his arguments Shri Chakravarti has relied on the following judgments:Jaishri Engineering Co. (P) Ltd. v. Collector of Central Excise, (Paragraph-10 of the (c) 1988 (36) E.L.T. 346 (Tribunal) : 1988 (18) ECR 145 (Cegat SB-C) in the case of Collector of Central Excise v. Sudhakar Litho Printers.

Shri Chakravarti further brought to our notice this Tribunal's Order No. 312/89-D dated 25.8.1989 in the case of the Collector of Central Excise, Rajkot v. M/s. Bombay Shuttle Manufacturing Company, Bhavnagar, in which it was held that "Shuttles" manufactured from compressed (improved) wood were classifiable under Item 68 of the Central Excise Tariff and not under Item 16B ibid. Shri Chakravarti has referred to paragraph-5 of the said order.

4. Shri Mookherjee has argued that the disputed products are parts of water gauges and hence classifiable under Item 68. He has relied on Bombay High Court judgment in the case of Kirloskar Oil Engines Ltd. v.Union of India, . He has also argued that duty was paid under Item 68 since 1975 and it became an

established practice. Hence the classification could not be changed and the duty could not be charged retrospectively.

5. The Misc. application No. E/366/90-D was filed by the Collector of Central Excise, Calcutta I praying that the Tribunal may issue direction to the respondents to produce the classification lists.

Direction was accordingly issued to the respondents vide Misc. Order No. M-227/90-D dated 29.8.1990. However, the Assistant Collector (T & A) Central Excise, Calcutta-I Collectorate, Calcutta with his letter C.No. V(22F)2/270/TBL/CE/84/15148D dated 19.12.1990, filed copies of the Classification lists. The Misc. application thus got disposed of.

6. We have considered the records of the case and the arguments of both sides. In the impugned order the Collector (Appeals) has given specific findings that "There is no dispute that all these products are made of Asbestos material. But examination of the samples of the products in dispute clearly shows that the products Sleeve Packings and Hexagonal Packing Rings are component parts of an instrument/machinery. According to the write up given by the appellants Sleeve Packing is used as Gland Packing for Water Gauges manufactured by them and Hexagonal Packing Rings are used for Gland Packing for Water Gauges manufactured by them.

These two products are clearly identifiable as parts/components of water Gauges. Even if they contain Asbestos in predominant weight they cannot be classified under Item 22F because they are parts and components of an instrument known as Water Gauges. These two products correctly fall under Item 68 of the C.E.T. The order of the Assistant Collector classifying these two products under item 22F is, therefore, set aside. With regard to the indurated Asbestos, the product is in the form of Fibres and it is correctly classifiable under Item 22F(2) as Asbestos Fibres. However, this change in the classification of Indurated Asbestos will be effective only from 11.10.1983, the date of impugned order of the Assistant Collector. It will have no further retrospective effect. As a result the differential duty demanded and confirmed amounting to Rs. 55,724.07 is set aside. In view of the specific findings of the Collector (Appeals) that Sleeve Packings and Hexagonal Packing Rings are

component parts of an instrument/machinery according to the examination of the samples and also the write up given by the respondents herein, we hold that the Collector (Appeals) correctly classified these two products under Tariff Item 68 and not Item 22F. These two items could be classified under item 22F if these were not clearly identifiable as parts of instruments/machinery. That is not the case here. We, therefore, confirm the classification of the two products, namely; Sleeve Packings and Hexagonal Packing Ring under Tariff Item 68. So far as the third item, namely, Indurated Asbestos, is concerned, the Collector (Appeals) has upheld the classification under Tariff Item 22F as the product is in the form of Fibres (and not component parts of instruments/machinery). We do not find any mistake in this classification. The respondents have also not challenged the order of the Collector (Appeals) so far as Indurated Asbestos is concerned.

7. On the question of limitation, prayer of the Revenue in paragraph-6 of the Appeal Memorandum is that "the demand for differential duty under Section 11A is valid for the period reckoned backward for 6 months from 20.5.1983, the date of issue of the Show Cause Notice to the said Company". The learned Departmental Representative has also reiterated the same prayer during the time of hearing before us. He has cited a few judgments in support of his contention. In the Supreme Court judgment in the case of Tata Iron & Steel Co. Ltd. v. Union of India and Ors., the appellants therein were filing classification lists since 1962 and those lists were accepted and approved by the Central Excise authorities. It could not be said that the appellants were guilty of any suppression and misstatement of the facts, fraud, collusion or contravention of provisions of Central Excise Act. The Hon'ble Supreme Court, therefore, held that in view of this, the period of limitation would clearly be only six months and the extended period of 5 years was inapplicable. In the present case also the respondents filed classification lists since 1975 and the same were approved by the proper officer and duty was accordingly paid under Tariff Item 68. It cannot, therefore, be said that they were guilty of any suppression or misstatement of facts, fraud, collusion etc. The fact that the respondents did not furnish the composition of their productions in the classification lists will not affect this position.

Tariff Item 68 attracted lower rate of duty which was claimed by the respondents. The proper officer could very well ask the respondents to furnish the composition of the goods before he approved the said lists.

It is nobody's case that the respondents did not furnish the composition in spite of being asked to do so. This being the position, they cannot be held guilty of suppression or misstatement of facts etc.

Therefore, following this judgment of the Hon'ble Supreme Court, we uphold the demand for differential duty for a period of six months prior to the issue of the show cause notice on 20.5.I983.

8. The learned Departmental Representative has relied on paragraph-10 of the Supreme Court judgment in the case of Jaishri Engineering Co.

(P) Ltd. v. Collector of Central Excise, In the said paragraph of the judgment it was stated that the appellant therein was buying and selling the products as nuts but they described the goods as end fittings in the declaration given to the Department.

From the conduct of the appellant suppression was established in the said case. The facts in the present case are not similar. Hence the aforesaid judgment of Hon'ble Supreme Court is not applicable to the present case. The learned advocate for the respondents has relied on Bombay High Court judgment in the case of Kirloskar Oil Engines Ltd. v.Union of India, . In the said case it was held by the Hon'ble High Court that the demand notice dated 16.10.1978 was to be limited to clearance of goods from 23.9.1978 onwards, as the decision to treat thrust washers and wrapped bushes as thin walled bearings was communicated to the assessee on 23.9.1978. In view of the judgment of the Hon'ble Supreme Court in the case of Tata Iron & Steel Co. Ltd. v. Union of India and Ors. (supra), we are to follow the Supreme Court judgment in preference to the judgment of Bombay High Court.

9. In the light of the above findings, we uphold the classification as decided by the Collector of Central Excise (Appeals) in the impugned order, but so far as the

demand for differential duty is concerned his order is set aside and the appeal allowed to the extent that the demand for duty should be limited to six months prior to the issue of the show cause notice dated 20.5.1983.

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