Collector of Central Excise Vs. Anand Behari Steel and Wire

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-10-1991

Reported in : (1991)(37)LC689Tri(Delhi)

Judge : H Chander, Vice-, K T P.K.

Appellant : Collector of Central Excise

Respondent : Anand Behari Steel and Wire

Judgement :
1. These appeals arise out of a common order passed by the Collector of Central Excise (Appeals), New Delhi allowing four appeals filed by the respondents.

2. Brief facts of the case are that the respondents were manufacturing Mild Steel Galvanised wires of 2.00 and 3.55 mm cross-section for supplying to the Post and Telegraph Department. The classification list No. 12/85-86 effective from 26.3.1985 in respect of the product under Central Excise Tariff item 25 A was provisionally approved, classifying the goods under Tariff item 33-B, treating them as Electric Wires and cables. In compliance with the Asstt. Collector's letter dated 23.1.1985 directing the respondents to file the revised classification list, they filed under protest another list, showing the classification of the goods under Tariff Item 33-B as Electric wires and cables. On 3.9.1986 the classification list No. 12/85-86 which was approved provisionally was accorded final approval by the Asstt. Collector classifying the Mild Steel Galvanised wires of 2.00 and 3.55 mm cross-section under Tariff Item 33-B as Electric Wires and Cables.

Thereafter their refund claims were filed by the respondents on account of the difference between the duty under Tariff Items 25 and 33-B. The claims were rejected on the grounds that in terms of the approved classification list the duty was correctly paid under Tariff Item 33-B as Electric Wires and Cables. The appeal filed against the order rejecting the refund was upheld by Collector (Appeals) on the grounds that the Asstt. Collector had not disclosed the basis or the evidence as regards his findings that the Galvanised iron wire supplied to the Post and Telegraph Department was telecommunication wire. The Collector (Appeals) also held that the Galvanised Iron wire in question was being cold drawn product of 2.00 mm and 3.55 mm cross-section was specifically covered under Tariff Item No. 25(14).

3. On behalf of the respondents the learned Advocate Shri M. Ganesh referred to the observations made by the Collector (Appeals) in his order that the Assistant Collector had taken die view that the "Galvanised Iron wire" supplied to the Post and Telegraph Dept had been used as Telecommunication Wire' without disclosing the same to the appellants for enabling them to defend their case on this point. Shri Ganesh contended that apart from the fact that the Assistant Collector had not disclosed any evidence or basis for treating the Galvanised Steel Wire of 2.00 to 3.55 mm cross-section as telecommunication wire he had chosen to classify it under Tariff Item 33-B covering Electric Wires and Cables, all sorts not elsewhere specified" in preference to the specific Entry No. 25(14)which covered "Iron and Steel Wires whether or not coated but insulated". In support of his case he cited the Supreme Court decision in the case of Bharat Forge & Press Industries (P)Ltd. v. Collector of Central Excise wherein it was held that under a residuary entry only such goods are covered which cannot be brought under the reasons specific entries in the tariff. In this regard, he also cited the Supreme Court decision in the case of Atul Glass Industries v. Collector of Central Excise and Ors. and (India) Pvt. Ltd. v. Asstt. Collector of Central Excise, ID.O., Mysore and Ors. . He also placed reliance on theRayalaseema Cable Corporation v. CCE, Hyderabad reported in 1983 ELT 2358 wherein it was held that base aluminium wire 10 SWG and less does not fall under Tariff Item 33-B of Central Excise Tariff. He contended that the Department's stand was not consistent since the order of the Asstt. Collector which is sought to be restored by the appellants staled that the

wires in question were classifiable under Tariff Item 33-B whereas for the first time in the grounds of appeal it had been stated that base wires fell within the ambit of Tariff Item 33-B(ii). Shri Oanesh reiterated his stand that the Collector (Appeals) had rightly held that the galvanised steel wire in question was covered by the deputation of "Wire" under the Tariff Item 25 and was therefore classifiable under the specific Item 25(14) in preference to the general Item 33-B of the Central Excise Tariff.

4. On behalf of the appellants Shri M.S. Arora, the learned JDR argued that the Collector (Appeals) had failed to appreciate that the Asstt.

Collector had decided to treat the Galvanised Steel Wire in question as current carrying Telecommunication Wires, assessable under Tariff Item 33-B since they were supplied to the Post and Telegraph Department and this fact was disclosed to respondents to enable them to put forth their defence. He contended that the respondents had not disputed the Department's claim that the impugned wires were designed to carry current and were supplied to the Post and Telegraph Department for use as telecommunication wires. He argued that for the Mild Steel Galvanised wire in question being current carrying telecommunication wire for use by the P. & T. Department, Tariff Item 33-B(ii) was more specific as compared to Item 25(14) which covered only non-electric ordinary Iron or Steel wire.

5. We have carefully considered the arguments of both the sides. It is seen that the only question that arises for consideration is whether the Mild Steel Galvanised wires of 2.00 and 3.55 mm cross-section manufactured by the respondents were classifiable under Item 33-B(ii) of the Central Excise Tariff. From the records of the case we find that in the classification list filed by the respondents they had claimed classification of their product under item 25(14) of the Central Excise Tariff. However, the Asstt. Collector revised the list and approved the classification of Mild Steel Galvanised wires of 2 mm and 3.55 mm under item 33-B CET as Electric wires and Cables. After clearance of the goods on payment of duty under protest the respondents claimed refund on the grounds that the goods were classifiable under Item 25(14) CET.The only reason given by the Asstt. Collector while rejecting the claim was that Mild Steel Galvanised wire supplied to P & T

Department was not classifiable under item 25 CET. However, the Collector (Appeals) revised the AsstL Collector's Order and held that Galvanised Iron wire of 2.00 mm and 3.55 mm cross-section not being insulated would merit classification under Item 25(14) CET.6. For proper appreciation of the rival claims, it would be desirable to reproduce below the relevant extracts from Items 33B and 25 of CET: 6A. It is seen that in order to classify any wires or cables under Tariff 33-B of the C.E.T. it would be essential to establish that they are of electrical grade. In this case, it is seen that in respect of the disputed Galvanised Mild Steel Wires of 2 mm and 3.55 mm cross-section the only grounds given by the Asstt. Collector while rejecting the respondents refund claim on the basis of reassessment under Item 25(14) CET was that the wires in question being meant for supply to the P & T Department were telecommunication wires. Since all Iron & Steel wires purchased by P & T Department need not necessarily be of electrical grade for use as telecommunication wires, it is evident that the Asstt. Collector did not cite any material as regards the quality or technical specifications on the basis of which the wires in question could be categorised as electrical wires.

7. The appeal filed by the respondents was allowed by the Collector (Appeals) who held that the Galvanised Iron wire in question was cold drawn product of 2.00 mm and 3.55 mm cross-section and not being insulated, it was more appropriately classifiable under Item 25(14) of CET. In this regard it is seen that Collector (Appeals) also did not make any efforts to examine on the basis of the relevant specifications or material to rule out the possibility of the disputed wires being of electrical grade and proceeded on the erroneous assumption that all non-insulated Iron and Steel Wires are necessarily of nonelectrical grade.

8. As observed by us earlier, neither the order passed by the Asstt.

Collector nor the Order-in-Appeal took into account the technical specifications and other relevant material available with the manufacturers and the buyers of the Galvanised Steel wires in question to determine whether they were of electrical grade. We find that except for the price list in which the goods were described as Mild Steel Galvanised wires of 2.00 mm and 355 mm diameter (supplied to the P & T Department) there is no other material in the case records to enable us to give a finding on the classification of the goods. The matter is, therefore, required to be remanded to the lower authority for de novo examination of this issue with reference to the relevant material and records.

9. Accordingly, we set aside the order-in-appeal and remand the case to the Asstt. Collector for de novo examination.