

Heat Weld Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-12-1991

Reported in : (1992)LC578Tri(Delhi)

Appellant : Heat Weld

Respondent : Collector of Central Excise

Judgement :

1. The appellants are a small scale unit engaged in the fabrication of pressure vessels, gas cylinders, storage tanks, tank bodies for LPG Tanker-Trucks and Trailer-Tankers. LPG tankers of capacity upto 25000 litres mounted on duty paid chassis were classified by the Central Excise authorities under Heading 8704.00 of the Central Excise Tariff and were assessed to duty at the rate of Rs. 4,000/- per unit under Notification No. 162/86. LPG tanks of capacity more than 25000 litres manufactured by the appellants were mounted on duty paid prime movers and trailers with the weight of the tank body falling partly on the prime-mover and partly on the trailer. In the Show Cause notice dated 29-2-1988 issued to the appellants it was alleged that Semi-Tanker-Trailer No. 57 was cleared by the appellants without payment of Central Excise duty and in respect of Semi-Tanker-Trailer No. 55 covered by gate-pass No. 35 dated 22-12-1987 prior to the removal from the factory the appellants had failed to debit the duty in the PLA. It was further alleged that the appellants product being Semi-Tanker-Trailer was assessable @ 15% under Heading 8716.00 of the Central Excise Tariff whereas it had been deliberately misdeclared as motor-vehicle attracting duty at Rs. 4,000/-

per vehicle under Heading 8704.00 read with Notification No. 162/86. It was also alleged that the assessable value of the tanker-trailer ought to have been the aggregate of the value of the pressure vessel and the value of the trailer parts.

On this basis the appellants were asked to show cause as to why differential duty amounting to Rs. 3,58,303-20 on goods cleared during the period 1-4-1987 to 23-12-1987 should not be recovered and Semi-Tanker-Trailer No. 57 released provisionally against B-11 bond should not be confiscated.

2. In the impugned order dated 23-8-1988 passed by the Additional Collector it was held that the LPG tanks manufactured by the appellants were separately assessable under Central Excise Tariff Heading 8609.00 and the final product manufactured out of prime mover, LPG tank and trailer was classifiable under Central Excise Tariff Heading 8716.00.

It was also held that assessable value of the Tanker mounted Trailer had to be the aggregate of the value of landing gear, running gear and pressure plate and the value of the fabricated tank. On these grounds and also on the ground that the appellants had made a wilful mis-statement in regard to their body-building activity with the intention of availing concessional rate of duty under Heading 8704.00 @ Rs. 4000/-per vehicle in terms of Notification No. 162/86, the Additional Collector confirmed under Rule 9(2) read with the Proviso to Section 11A of the Central Excises & Salt Act, 1944 the demand for Rs. 3,58,303-20 in respect of goods cleared during the period 1-4-1987 to 23-12-1987. He also held that Semi-Tanker Trailer No. 57 was liable to confiscation and imposed the redemption fine of Rs. 40,000/- and ordered the appropriation of this amount from the security furnished by the appellants against B-II bond. A penalty of Rs. 50,000/- was also imposed on the appellants.

3. On behalf of the appellants we heard the learned Advocate Shri B.B.Gujral. At the outset Shri Gujral pleaded for admission of the following additional evidence :-
(i) The approved classification lists in respect of the appellants products for the period December, 1987 to March, 1990 and classification lists in respect of identical goods approved by the Central Excise authorities in Bombay.

(ii) The Order No. 37/89 dated 24-7-1989 passed by the Assistant Collector of Central Excise, Pune.

4. Continuing his submission Shri Gujral stated that LPG Tanks for Trucks manufactured by the appellants when mounted on duty paid chassis were classifiable under Heading 87.04 and attracted duty at the rate of Rs. 4,000/- per unit under Notification No. 162/86. He added that LPG Tanks of capacity over 25,000 litres manufactured by the appellants were mounted on duty paid prime-mover and duty paid three piece trailer in a manner so that part of the weight of the tank body fell on the prime-mover and the other part rested on the trailer. He pointed out that the duty paid prime-mover used for this purpose were manufactured by well known manufacturers like M/s. TELCO and M/s. Ashok Leyland Ltd. He added that the final product that emerged after mounting the tank on the trailer and prime mover was an integrated unit commercially known as 'Articulated Vehicles'. He stated that the Chief Controller of Explosives and the Regional Transport Authorities in various states were treating such vehicles as inseparable units and were licensing them as single unit and not separately as prime mover and trailer. He contended that such vehicles were commercially known as "Articulated Vehicles" Which were also defined under explanation (2) below the table annexed to Notification No. 162/86. He argued that being designed for the transport of goods such vehicles were appropriately classifiable under Heading 8404.00 as motor vehicles and not as trailers under Heading 8716.00 as held by the Additional Collector. He stated that the trailers used by the appellants for the manufacture of 'articulated vehicles' were for the sake of convenience in transportation brought in three parts namely, running gear, landing gear and mounted plate and duty having been paid on them under Heading 8716.00 no further duty could be levied on them under Heading 8716.00 since after assembly the resultant product was an 'integrated or articulated vehicle which could not be deemed as a trailer. Shri Gujral contended that the Additional Collector's decision that the integrated tanker-trailer was classifiable under Heading 8716.00 was illegal since levy of duty once again under Heading 8716.00 would result in collection of duty twice under the same heading. He reiterated his stand that the vehicles produced by the appellants were assessable at Rs. 4000/- per vehicle under Heading 8704.00 read with Notification No. 162/86 and no duty was

separately leviable under Heading 8609.00 on the tank or container in view of the concession under Notification No. 217/86. He contended that computation of the assessable value of the goods by adding the values of the tanker and the duty paid trailer was incorrect and irrelevant since the goods were assessable at the specific rate of Rs. 4000/- per vehicle.

5. Shri Gujral contended that the extended time limit under proviso to Section 11A was not applicable since there was no suppression of facts by the appellants in regard to the manufacturing activities. He added that the L-4 licence issued by the department clearly showed the nature of the appellants manufacturing activity and, the classification list No. 129/87 as well as the subsequent lists filed by the appellants were approved specifically in respect of LPG Tanker mounted on duty paid chassis under Heading 8704.00 assessable @ Rs. 4000/- per unit under Notification No. 162/86. He pointed out that in the letter dated 8-7-1987 the appellants had informed the Superintendent, Central Excise and the Assistant Collector that their product consisted of tank body mounted on trailer or running gear. He stated that the appellants' manufacturing activities were known to the department since Central Excise officers were paying regular visits to their factory.

6. Shri Gujral contended that having regard to the nature of the offence the penalty of Rs. 50,000/- imposed on the appellants was disproportionate. He stated that in regard to one of the seized vehicles the appellants were genuinely under the belief that duty of Rs. 4000/- having been paid at the time of clearance of the chassis with the driver's cabin no further duty was leviable on that vehicle after fitment of LPG tank, and in the second case duty was not adjusted due to a bonafide clerical error, even though there was sufficient balance in the PLA. In support of his arguments Shri Gujral cited the following case law:- (i) Garden Reach Shipbuilders & Engineers Ltd., Marine Drive Engine Plant v. CCE, Patna [1985 (19) ELT 447]. Bharat Heavy Electrical Ltd. v. CCE, Indore [1987 (31) ELT 799 (Tribunal)] Steel Industrials Kerala Ltd. v. CCE, Cochin [1986 (24) ELT 314 (Tribunal)] Air Conditioning Corporation v. CCE, Calcutta [1985 (19) ELT 206 (Tribunal)] vi) Madhumilan Syntex Pvt. Ltd. and Anr. v. UOI and Anr. [1985 (19) ELT 329 (M.P.)] (vii) Mac Laboratories (P) Ltd. v. CCE, Bombay [1989 (40) ELT 276 (SC) = 1985 (19) ELT 307 (Tribunal)] CCE, Hyderabad v. Chemphar Drugs &

Liniments [1989 (40) ELT 276 (SC) (xi) Tata Yodogwa Limited \.Asstt. Collector of Cen. Excise, Jamshedpur& Ors - [1983 (12) ELT 17 (Pat.)] 7. On behalf of the department the learned JDR Shri M.S. Arora opposed the admission of the additional evidence filed by the appellants on the grounds that the classification lists approved by certain other collectorates did not pertain to the period when the disputed goods were cleared by the appellants and the practice prevalent in other collectorates was not relevant for the determination of classification of the goods in question. Dealing with the other points raised on behalf of the appellants Shri Arora stated that the disputed goods could not be deemed as motor vehicles since it has been held by the Punjab and Haryana High Court in the case of Darshan Singh Pavitar Singh v. CCE reported in 1990 (47) ELT 532 that small scale units engaged in the mounting of bodies on duty paid chassis could be deemed only as manufacturers of bodies and not motor vehicles. He referred to the Explanatory Notes to Heading 87.16 of the H.S.N. and contended that the appellants product answers the description of tanker-trailer which is manufactured by them out of duty paid trailer parts and tanks fabricated in their factory. He claimed that the extended period in terms of proviso to Section 11A could be invoked in this case since the appellants had wilfully mis-stated their activity as manufacturing of commercial vehicles in the classification lists and the application for L-4 licence with the intention of availing the exemption under Notification 162/86. He contended that the adjudicating authority had correctly held that the assessable value of trailer-tanker had to be worked out by taking into account the value of the running gear, landing gear etc. in addition to the value of the tank fabricated in the appellants' factory. In support of his arguments Shri Arora placed reliance on the following case law :-Raj Copper & Cable Inds. v. Collector of Customs, Bombay 1988 (38) ELT 371 (S.C.) (iii) Darshan Singh Pavitar Singh and Ors. v. U.O.I. and Ors 1988 (34) ELT 631 (P & H) 8. We have examined the records of the case and considered the submissions made on behalf of both sides. Before examining the issues involved in this case we would like to deal with the appellants' request for admission of certain additional evidence. In this regard, it is seen that the documents which are sought to be filed by the appellants at this stage are not relevant for the determination of the classification of the disputed goods which has to be based strictly on the interpretation of the relevant provisions of the Central

Excise Tariff. However, in our view, the classification lists relating to the appellants' products approved by the Department from time to time and the order No. 37/89 dated 24-7-1989 passed by the Assistant Collector are vital for the determination of certain other basic issues that arise for consideration in this case. We, therefore, permit the approved classification lists in respect of the appellants' products for the period December, 1987 to March, 1990 and the order dated 24-7-1989 passed by the Assistant Collector to be admitted as additional evidence.

9. It is seen that the appellants are engaged in the manufacture of LPG Tanks and mounting them on certain duty paid trailer parts and prime mover. The resultant product according to the appellants is an integrated vehicle for the transport of goods, classifiable under Heading 8704.00 of the Central Excise Tariff attracting duty @ Rs. 4000/- per vehicle in terms of Notification No. 162/86 (as amended). As against this the Department's case is that the appellants' product being LPG tanker mounted on a trailer chassis is classifiable under the Heading 8716.00 which covers "Trailers and Semitrailers, other vehicles not mechanically propelled; parts thereof and the tank or metallic shell was also separately classifiable under Heading 87.07.

10. For proper appreciation of the rival claims we consider it desirable to reproduce below the relevant Headings in the Schedule to the Central Excise Tariff Act, 1985.

Headin	Sub-heading	Description of goods	No.
No.87.04	8704.00	Motor vehicles for the transport of goods	
87.06		Chassis fitted with engines, for motor	
8706.10		- For the vehicles of Heading No.87.01	8706.20
		- For the vehicles of Heading No.87.02	8706.30
		- For the vehicles of Heading No.87.03	8706.40
		- For the vehicles of Heading No.87.04	8706.50
		- For the vehicles of Heading No.87.05	8707.00
87.07		Bodies (including cabs), for the motor	
87.16	8716.00	Trailers and semi-trailers; other vehicles,	

Since the Central Excise Tariff Act, 1985 is broadly aligned to the Harmonised Commodity Description and Coding System (HSN) in our view a reference to the following extracts from the notes to Heading 87.16 to HSN would also be relevant :- "This heading covers a group of non-mechanically propelled vehicles (other than those of the preceding headings) equipped with one or more wheels and constructed for the transport of goods or persons.

It also includes non-mechanical vehicles not fitted with wheels (e.g. sledges, special sleds running on timber trackways).

The vehicles of this heading are designed to be towed by other vehicles (tractors, lorries, trucks, motorcycles, bicycles, etc.), to be pushed or pulled by hand or to be drawn by animals.

For the purpose of this heading, the terms "trailers" and "semi-trailers" means vehicles (other than side-cars) of a kind designed solely to be coupled to another vehicle by means of a special coupling device (whether or not automatic).

The most important types of trailers and semi-trailers falling in this group are those designed for use with motor vehicles. Trailers usually have two or more sets of wheels, and a coupling system mounted on the swivelling front wheels which steer the vehicles, Semi-trailers are fitted with rear wheels only, the forward end resting on the platform of the towing vehicle to which it is coupled by a special coupling device.

For this purpose of the following Explanatory Note, the term "trailers" includes semi-trailers.

(2) Self-loading agricultural trailers fitted with automatic loading devices and possibly also with attachments for chopping forage, maize (corn) stalks, etc.

(3) Self-unloading trailers for carrying different products (forage, manure, etc.) with a moving floor for unloading purposes; these vehicles can be fitted with various attachments (manure chopper, forage shredder, etc.) to adapt them for use as a muck spreader, forage box or root trailer.

It follows from the Explanatory Notes extracted above that 'trailers' and 'semi-trailers' including tanker trailers covered by Heading 87.16 are non-mechanically propelled vehicles used for the transport of goods or persons which are designed to be coupled to another vehicle, generally a motor vehicle, by means of some special coupling device.

Trailers usually have two or more sets of wheels and a coupling system mounted on the swivelling front wheels which steers the vehicles.

Semi-trailers are fitted with only rear wheels and their forward end rests on the platform of the towing vehicle to which it is coupled by a special coupling device.

11. It is an admitted fact that apart from the duty paid prime mover manufactured by well known manufacturers of motor vehicles, the appellants receive duty paid parts of trailers, namely, running gear, landing gear and mounting plate falling under Heading 87.16 from other manufacturers. The appellants have claimed that running gear, landing gear and mounting plate constitute a complete trailer which is sent to them in knocked down condition for the convenience of transportation.

However, on inspection of the drawings showing the mounting details of tanker-trailers of different capacities fabricated by the appellants it is seen that they are only parts of trailers. The running gear consists of either a single or double set of wheels with a chassis or platform, the landing gear is a breaking device to be attached to the LPG tank, and the mounting plate is a part through which the tanker-trailer is coupled to the prime-mover. These parts by themselves cannot be assembled into any non-mechanically propelled vehicle capable of being towed and used for the transport of goods or persons. It is only when one end of the LPG tank fabricated by the appellants is mounted on the trailer chassis that a semitrailer comes into being. The appellants have contended that placement of one end of the LPG tank on the trailer chassis and the other on the prime-mover results in the manufacture of an integrated motor vehicle commonly known as 'articulated vehicle' covered by Heading 87.04. However, the notes to the Heading 87.16 of the HSN state that "Semi-trailers are fitted with rear wheels only, the forward end resting on the platform of the towing vehicle to which it is coupled by a special coupling device". It is therefore, evident that the LPG tank manufactured by the appellants, on attachment at one end to the running gear results in the emergence of a new product viz. 'Semi-tanker-trailer' which is coupled through a special coupling device to the prime mover. In this regard it is also seen from the records of the case that the drawings relating to the mounting plan of various parts of these vehicles also describe them as 'tanker-trailer'.

12. The finding that the appellants cannot be deemed as manufacturer of motor vehicles covered by Heading 87.04 of the Central Excise Tariff is reinforced by the decision of the Punjab and Haryana High Court in the case of Darshan Singh Pavitar Singh and Ors v. Union of India and Ors [1990 (47) ELT 532 (F & H)] from which the relevant extract is reproduced below :- "The only conclusion that can be drawn is that the body building is not the same as the manufacture of complete motor vehicle. It may be a link in the whole process and the Legislature has taxed it as an independent item. It is not unknown that in order to encourage subsidiary industries and the small scale units, the Legislature thinks it proper to exempt such industries or units from the excise duty. However, they still kept the impost if the body is built as part of the integral process of manufacturing the vehicle. It is not disputed that in the trade body building is taken as an independent item and building of it is not understood as manufacturing of a motor vehicle. No body builder has ever been described to be a manufacturer of motor vehicle. It does not appeal to the reason that merely body being built on the chassis will deprive it of its character as a body of the motor vehicle. It would still continue to partake the colour and name of the article known in the trade, i.e.

body building. It is in the eyes of those who are dealing with the commodity and in commercial parlance that the body is treated as distinctive character and identity from the end-produce. The interpretation put forward by the appellants would lead to an illogical result. There is no reasonable basis for the appellants to treat differently the bodies built on the chassis itself, and those built away from the chassis and then mounted on the chassis. The only intelligent deduction from the basis design appears to be from reading of the entries as well as charging Section 3 and Notification No. 175/86-C.E., dated March 1, 1986 as well as the Schedule and subsequent Notification No. 162/86-Central Excise, dated March, 1, 1986, that building or process of manufacturing or fabrication of bodies would not partake the character of manufacture of motor vehicle which may be used for the purpose of carriage of goods or passengers. Since the respondents are not manufacturing any motor vehicle, they are not liable to take any licence. Otherwise also, as observed in *Porritts & Spencer (Asia) Ltd. v. State of Haryana*, (1978) 42 Sales Tax Cases 433, it is the functional character that a product is so identified which is identified in the mind of the consumer. 15. Thus, the question posed by the

counsel for the appellants, whether the process of building of bodies of buses or trucks would amount to manufacture of motor vehicle as envisaged by Heading No. 87.02 and 87.05 of the Central Excise Tariff Act, 1985, is to be answered in the negative. Merely building of the bodies does not amount to manufacture of motor vehicles." 13. We are, therefore, of the view that the appellants are mainly engaged in the manufacture of tanks or bodies for vehicles used for transportation of liquids. These tanks or bodies are specifically covered by Heading 87.07. Such tanks are used by the appellants captively for the manufacture of tanker-trailers out of duty paid components of trailers received by them. The tanker-trailer/semi-trailer is coupled through a special coupling device to a duty paid prime mover. Even though the tanker-trailer/semi-trailer manufactured by the appellants is coupled by a special coupling device to a duty paid prime-mover, being an item specifically covered by the Heading 87.16, it would once again be chargeable to duty.

14. The appellants have contended that the LPG tank before it is mounted on the trailer and prime-mover is only a bare shell and not a finished item so as to attract duty under Heading 87.07. However, this argument has no force at all, since even if minor functions like painting of the tank or attachment of certain gauges is carried out after the attachment of the tank to the running gear; such tank bodies can be deemed to have acquired the essential character of the finished tanks. Hence, in terms of Rule 2(a) of the Rules for interpretation of the Schedule to the Central Excise Tariff Act, 1985, they will have to be deemed as finished products.

15. In regard to the order of the Additional Collector confirming the demand for a sum of Rs. 3,58,303.20 for the period 1-4-1987 to 23-12-1987 under proviso to Section 11A, we find that there is sufficient force in the appellants' argument that the demand was barred by limitation since there was no evidence of any wilful mis-statement or suppression of facts so as to permit the invocation of the extended period of 5 years for raising the demand. In this regard it is seen that the description of the excisable goods indicated in the L-4 licence issued by the Department to the manufacturers was "Motor Vehicles for the transport of goods (LPG tanks)". The goods were shown in the licence as classifiable under Heading 8704.00. It is also seen that Assistant Collector while conveying the approval of

the classification list No. 129/87 dated 18-3-1987 stated in his letter dated 28-9-1987 that the LPG container would be chargeable to duty under Heading No. 8609.00 and after mounting the 'LPG container' on duty paid chassis the LPG tanker would be classifiable under Heading 8704.00 attracting duty at Rs. 4,000/- per vehicle in terms of Notification No. 162/86 and benefit of Notification No. 241/86 would also be admissible. Further, on the question whether LPG tank mounted on trailer/semi-trailer would be classifiable under Heading 8716.00 or Heading 8704 of the Central Excise Tariff the Assistant Collector in his order dated 24th July, 1989 held that the appellants product LPG-tanker mounted on duty paid chassis was classifiable under Heading 8704.00. From these documents it is evident that the nature of the disputed product and all details of its manufacturing process was within the knowledge of the department which in accordance with the prevailing practice decided to classify the disputed goods under Heading 8704.00 of the Central Excise Tariff. Under these circumstances we do not find any reason for holding the appellants guilty of wilful mis-statement or any suppression of facts with the intent of evading central excise duty. In this regard the Supreme Court in the case of Collector of Central Excise v. Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC)] has observed as under :- "In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful mis-statement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case." Having regard to the facts of the case on the ratio of the Supreme Court judgment we hold that the extended period under proviso to Section 11A could not be invoked by the department.

16. As regards the seized semi-tanker trailer No. 57, it is seen that the appellants had cleared it from their factory without payment of duty. Hence we find no reason to interfere with the order of the adjudicating authority holding the vehicle as liable to confiscation.

However, in regard to the tanker No. 55 the appellants have pointed out that even though there was sufficient balance in PLA the duty was not debited due to bona fide clerical error. Since in respect of this vehicle there is no evidence to show that the contravention of the relevant rules was with the intention to evade duty, we hold that on the ratio of the Tribunal's decision in the case of Garden Reach Ship Builders and Engineers Ltd. v. Collector of Central Excise [1985 (19) ELT 447], the appellants were not liable to penalty.

(i) The LPG tanks manufactured by the appellants for mounting on trailers would be classifiable under Heading 87.07 of the Central Excise Tariff and after conversion of such tanks and duty paid running gear, landing gear and mounting plate into tanker-trailer/semi-trailer, the product would be assessable to duty under Heading 8716.00 of the Central Excise Tariff read with the relevant Notifications permitting adjustment of duty paid on the inputs against the duty that may be payable on the final product.

(ii) The order confirming the demand for Rs. 3,58,303.20 in respect of goods cleared between 1-4-1987 and 23-12-1987 is set aside as barred by limitation.

(iii) Order holding the tanker No. 57 as liable to confiscation is confirmed. However, having regard to the overall facts and circumstances, the redemption fine is reduced to Rs. 5,000/- (Rupees five thousand only) and the penalty is reduced to Rs. 2,500/- (Rupees two thousand and five hundred only)

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