

Chief Financial Controller, Vs. Collector of Customs

Chief Financial Controller, Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/6592

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-31-1991

Reported in : (1992)(38)ECC37

Judge : H Chander, Vice, P Kapoor

Appellant : Chief Financial Controller,

Respondent : Collector of Customs

Judgement :

1. This is an appeal against the order passed by the Collector of Customs (Appeals), Madras. Briefly stated the facts of the case are that Cupro-nickel condenser tubes imported by the appellants were assessed at 80% + 35% + 28% CVD as Copper alloy tubes (copper 90%, Nickel 10%) under heading 74.07/08 of the Customs Tariff Act, 75. The claim filed by the appellants for refund of differential duty on the grounds that the tubes in question being meant for fitment as parts in condensers for turbines were assessable under heading 84.04/05 at 40% + 20% + 10% CVD was rejected by the Asstt. Collector. The appeal filed by the appellants was also rejected on the grounds that the copper tubes being specifically covered under heading 74.07/08 the imported tubes were assessable under that heading, notwithstanding the fact that they were cut to size for fitment in condensers.

2. On behalf of the appellants we heard the learned advocate Shri V.Lakshmi Kumaran. He contended that the imported tubes had to be deemed as parts of

cooling system of turbines since they were cut to size for fitment without any further working into the condenser system of the turbines. He added that on account of the use of sea water for cooling, the condensor tubes even though of special copper alloy conforming to British Standard 2871: Pt3, 1972 required frequent replacement on account of corrosion. He claimed that the tubes in question being of special corrosion resistant alloy and cut to size for fitment without any further working into the condensor system of turbines, were correctly classifiable as parts under heading 84.04/05 of the C.T. Act.

In this regard he referred to the Explanatory Notes to heading 74.07 of the BTN to which the notes under heading 73.18 were also applicable, and contended that the imported copper-alloy tubes being cut to size for fitment as parts of condensers have to be deemed as identifiable articles or machinery parts of Section XVI, in terms of item (c) of the list of items excluded from the purview of heading 74.07. In support of his claim, he placed reliance on the Tribunal's decision in the case *Bakelite Hylam Ltd., Bombay (and Ors.) v. Collector of Customs, Bombay* reported in 1986 (8) ETR 785 in which stainless steel press plates in the form of sheets were held to be classifiable as moulds under heading 84.60 of CTA in preference to the heading 73 of the CTA 1975. While concluding Shri Lakshmi Kumaran added that in the event of headings 74.07/08 and 84.04/05 being found to be equally applicable for the classification of the goods in question even then the goods would have deemed as covered by heading 84.04/05 the heading occurring later, in terms of Rule 3(a) of the Rules of Interpretation of the Customs Tariff Schedule.

3. On behalf of the department the learned SDR Shri S.K. Roy argued that the intended use is not relevant for the purpose of classification of any goods under the customs tariff since goods have to be classified keeping in view their form at the time of importation. He contended that notwithstanding the fact that the imported tubes were made of special material and were cut to size for being used straightaway as condensor tubings, they continued to be copper-alloy tubings classifiable under the specific heading 74.07/08 in preference to the general heading 84.04/05. He added that in view of the accepted principle that a specific heading has to be preferred over a general heading for the purpose of

classification of any goods under the tariff, the Explanatory Notes to the B.T.N, can be of no assistance to the appellants.

4. We have examined the records of the case and considered the arguments advanced by both sides. It is seen that the short point that arises for determination in this case is whether copper-nickel alloy tubings cut to size for fitment into condensor/cooling system in turbines would be classifiable as copper tubes under heading 74.07/08 or as parts of condensers/turbines under heading 84.04/05 of the Customs Tariff Act, 1975.

5. The two headings of the Customs Tariff Act, 1975 which have to be considered are reproduced below: Heading No. Sub-heading No. & description of article 74.07/08 Tubes and pipes and blanks thereof, of 84.04/05 Steam engines (including mobile engines, but not steam tractors falling within 6. It is seen that appellants, case for classification of the disputed goods under heading 84.04/05 of the C.T.A. rests mainly on the argument that the imported tubes were made of special corrosion resistant copper-nickel alloy conforming to the relevant British Standards and being cut to specified sizes they were suitable for fitment as parts directly into condensers or cooling systems of turbines as replacements for identical worn out tubes. In this regard reliance has been placed on the B.T.N. Explanatory Note to heading 74.07 and also to the note to heading 73.18 which is also applicable as regard to the scope of heading 74.07. In this regard reference has been made particularly to the following entry in the list of items which are specifically excluded from the scope of heading 74.07: (c) Tubes, pipes and hollow bars made into identifiable articles falling within other chapter e.g. machinery parts (Section XVI), 7. We find that Explanatory Notes to the B.T.N. which can at best have only persuasive value not of any help to the appellants. It is seen that despite being made of special copper-nickel alloy conforming to the relevant British Standards and being cut to specified sizes the imported goods continued to be copper alloy tubings which were specifically covered by the heading 74.07/08. Apart from the fact that the tubes in question did not bear any specific part number, they had not also been worked upon to give them any special shape or form to render them as identifiable articles or parts of machinery covered by Section XVI. It is evident that mere cutting of copper alloy tubings into certain

specified sizes would not be sufficient to transform them into identifiable parts of machinery covered by Section XVI, since Note 3 of Chapter 74 classifies (sic) that heading 74.07/08 is to be taken to apply to tubes which have been polished or coated or which have been shaped or worked, such as bent, coiled, threaded, drilled waisted cone shaped or tempered. Hence, in our view the copper tubes in question which had undergone only the process of cutting to certain specified size were covered by heading 74/07/08 and could not be treated as identifiable parts of machinery of Section XVI. We are, therefore, not impressed by the appellants' argument that the tubes in question were parts of condensers classifiable under heading 84.04/05. Even if it is accepted that the imported copper alloy tubings being cut to size, their classification under heading 84.04/05 as parts of condensor/turbine cooling system was also merited still the heading 74/07/08 being more specific of the two would have to be preferred on the basis of the well accepted principle laid down by the Honourable Supreme Court in the case of Dunlop India Ltd. & Madras Rubber Factory Ltd. reported in 1983 ELT 1566 that when an article is by all standards classifiable under a specific item of the Tariff Schedule, it would be against the very principles of classification to deny it the percentage[parentage?] and consign it to a residuary item.

8. We find that the Tribunals' decision in the case of Bakelite Hylam Ltd., Bombay v. CC reported in 1986(8) ETR 785 (sic) which has been relied upon by the appellants is also of no assistance to them. In that case the question before the Tribunal was whether flat stainless steel press plates used in conjunction with pressing machines for the manufacture of plastic sheets or laminates were classifiable as stainless steel sheets under heading 73.15 of C.T.A. or as moulds under heading 84.60 of the Customs Tariff Act, 1975. On the basis of the abundant material on record in the nature of literature, papers, pamphlets and catalogues from manufacturers, the Tribunal arrived at the finding that the press plates in question were known as flat moulds and they were extensively used in the plastic industry for the purpose of moulding flat products in the form of sheets or laminates. On the basis of these findings it was held that the press-plates in question were "moulds" classifiable under heading 84.60 C.T.A. which took within its purview even moulds of the type which are used for artificial plastic industry. It was observed that they could have fallen under heading 73.15 read with definition

of "sheets" and "plates" only if they were positively and wholly excluded from heading 84.60. In this regard the Tribunal further observed that even if there was some doubt, heading 84.60 being more specific would have to be preferred in terms of the statutory guideline provided in the Interpretation Rule 3(a).

8. In view of our finding that heading 74.07/08 C.T.A. was more specific for the goods in question which were merely copper-alloy tubings and not identifiable parts of machinery, the decision quoted by the appellants is of no help to them.

9. It is seen that our finding that the copper-alloy tubings were correctly classifiable under heading 74.07/08 C.T.A. in preference to heading 84.04/05 also finds support from the Tribunal's decision in the case of Hindustan Petroleum Corporation Ltd v. CC, Madras wherein copper-nickel tubes (30% nickel and 70% copper) claimed to have been exclusively designed for use in heat exchange for condensor system of the refinery were held to be classifiable under heading 75.04/06 and not under 84.17 of the Customs Tariff Act, 1975. The relevant extracts from the decision are reproduced below: The material composition heading 75.04/06- 'other articles of nickel' invoked by the department does not, by itself, have a better claim to being more specific than heading 84.17. But the position is altered by Note 2 to Chapter 75 which is in the following terms: 'Heading No. 75.04/06 is to be taken to apply, inter alia, to tubes, pipes, hollow bars and tube and pipe fittings which have been polished or coated, or which have been shaped or worked, such as bent, coiled, threaded, drilled, waisted, cone-shaped or finned.

By virtue of the above Note, the otherwise residuary heading 75.04/06 turns into to a specific one for nickel tubes. When nickel tubes which have been worked upon fall under this heading, there is all the more justification for plain nickel tubes to fall under this heading. We agree with the learned representative of the department that heading 75.04/06 read with Chapter 75, Note 2 is specific for nickel tubes, both worked and unworked. The appellants' reliance on exclusion note 1(f) to Section XV is misplaced because this note excludes only machinery, mechanical appliances and electrical goods from the scope of Section XV (in which Chapter 75 falls) and straight length nickel tubes are none of these.

10. In view of the above discussion, we uphold the order of the lower authority and reject the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com