Collector of Central Excise Vs. Elecon Engineering Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-25-1991

Reported in : (1992)(37)ECC121

Appellant : Collector of Central Excise

Respondent : Elecon Engineering Co. Ltd.

Judgement :

1. This appeal is directed against the order of Collector of Central Excise (Appeals), Bombay accepting the appeal of the respondents herein for classification of 'Foundation Bolts' of different sizes and shapes under Item 68 of the erstwhile Central Excise Tariff. Briefly stated, the position is that the Assistant Collector, Central Excise, Anand had not accepted the claim of the respondents for their classification under Item 68 but decided that the function of such bolts being that of fastening the machinery of material handling equipment to the foundation, they were rightly classifiable under Item 52. This order was reversed in appeal of the following ground :- "In the instant case the issue for consideration (is) whether foundation bolts (without nuts) are classifiable under Tariff Item 52 or otherwise. It is clearly mentioned in the Bombay Trade Notice 127/71 dated 5-7-1971 that "mere existence of threads would not render an article as a bolt, nut or screw if it is recognisable as component part of an instrument, apparatus or appliance or machine." The tariff definition of Item 52 is intended to cover only those which are known as bolts, nuts and screws in the market." 2. Referring to the orders of Appellate Collector of Central Excise, New Delhi in the case of M/s.

Western Coalfields Ltd., Bilaspur v.Superintendent (T), Central Excise, Raipur and Government of India's decision in the case of Rattan Mechanical Works (Regd.) Ltd., Ludhiana v. Collector of Central Excise, Chandigarh (1981 ECR 364D) which were cited before him, Collector (Appeals) observed that since the articles were not commercially available in the market and were not known in the trade as bolts, nuts and screws, they are not covered by Item 52. In view of the fact that the foundation bolts are designed for a particular purpose i.e., not used to fasten two surfaces or two articles but they are laid on the ground so as to prepare foundation for erecting the equipment or plant on it and also cannot be used for any other purpose, Collector (Appeals) accepted the classification under Item 68.

3. The ground taken in the appeal before us is that the function of these bolts being that of fastening the machinery of materials handling equipment to the foundation, they should correctly be classified under Item 52. The supposed engineering features of these bolts, whatever they may be, are latent and there is no evidence to indicate any other special characteristic of these bolts other than that of fastening. A reference to Explanatory Notes to Heading 73.32 of the CCCN as being couched in identical language as Tariff Item 52 has been made in support of the ground that all types of fastening bolts and metal screws regardless of shape and use are included in this tariff item. It is also mentioned in the appeal that in every second sentence in the impugned order there is a mention that the subject goods are "foundation bolt" which clearly establishes that the product is classifiable under Item 52 of the erstwhile Central Excise Tariff.

Reliance has been placed on the decision of the Tribunal in the case of M/s. Ramdas Mot or Transport Ltd., Kakinada v. Collector of Central Excise, Guntur - 1984 (3) E.T.R. 290.

4. The respondents in their letter dated 4-10-1990 stated that they did not desire to be heard and forwarded certain additional submissions. It is claimed that the burden to prove that the product was classifiable under Item 52 was on the appellant-Collector and cited the Supreme Court decision in the case of Collector of Central Excise v. Calcutta Steel Industries and Others -1989 (39) E.L.T. 175, in which it was held that the onus to tax particular goods known as such is on the

Revenue.

The essential functional utility of the disputed product was other than that as a fastener and fastening, if any, was simply incidental and it was an essential and indispensable component part for installation of plants and equipments at the erection site of customers. It did not answer the generic and general description - "bolts, nuts and screws" within the contemplation of Item 52. At any rate, the product does not answer the test of market parlance for being billeted in Item 52 and cited the Supreme Court judgment in the case of Collector of Customs V.Bhor Industries Ltd. - 1988 (35) E.L.T. 346, for this purpose. The respondents also contested the reliance placed by the Revenue on the Explanatory Notes of the CCCN relevant to Heading 73.32 and submitted that the old Central Excise Tariff was a self-proclaimed and self-supporting tariff and therefore, no external source or agency could be tapped for constructing the self-contained tariff. At any rate, since the CCCN was patterned on lines wholly different from those of the old Central Excise Tariff, recourse could not be had to the former for constructing the scope and ambit of any tariff entry in the latter.

5. Appearing for the appellant-Collector, Smt. J.M. Shanti Sundaram, the learned SDR referred to the decisions of the Supreme Court in the case of Plasmac Machine Mfg. Co. (Pvt.) Ltd. v. Collector of Central Excise -1991 (51) E.L.T. 161, in which it was held that the fact of captive use of Tie Bar Nuts and not for sale was not tenable because such use was not determinative of the question. She placed reliance on another Supreme Court judgment in the case of Jaishri Engineering Co.

(P) Ltd. v. Collector of Central Excise - 1989 (40) E.L.T. 214. She submitted that the product performed the function of fastening and it is for this reason that it was named "foundation bolt" in common parlance. It was basically a bolt in which two nuts were used and since it basically acts as a fastener, the other function of preventing vibrations etc., was secondary.

6. We have considered the submissions of both sides and perused the case records. From the order-in-original it appears that the Assistant Collector had examined the product by visiting the factory and thereafter recorded that the

function of foundation bolt is that of fastening the machinery of material handling equipment to the foundation. This evidence has not been controverted by the respondents.

The impugned order-in-appeal, by which Collector (Appeals) reversed the order of the Assistant Collector and decided the classification of the foundation bolts under Item 68 does not record any independent finding of the appellate authority, who has relied upon an order of Appellate Collector, Central Excise, New Delhi in another case and a decision of the Government of India in yet another case, in both of which the decisions were based on the premise that since the articles in question were not commercially available in the market and not known in the trade as bolts, nuts and screws, they were not covered by Item 52. The basis on which the appellate authority has recorded a finding that the foundation bolts are not used to fasten two surfaces or two articles, but are laid on the ground so as to prepare foundation for erecting the equipment on it is not clear from the impugned order-in-appeal. As against this, the Assistant Collector has recorded a finding after visiting the factory, according to which, the function of foundation bolt is that of fastening the machinery to the foundation. This being so, we do not see how the appellate authority could have reversed a finding of fact recorded by the lower authority without any new facts having been brought on record. Therefore, on this count alone, the impugned order is liable to be set aside.

7. The decisions of the Supreme Court cited by Smt. Shanti Sundaram, fully support her case. To quote from the Plasmac case (supra), the Supreme Court, in para 7, observed as under :- "7. The submission that the Tie Bar Nuts manufactured by the appellants to specifications of Injection Moulding Machines for captive use and not for sale is also, in our view, untenable, as such use is not determinative of the question. If the goods are capable of being sold that would be enough. In Bhor Industries Ltd., Bombay v. Collector of Central Excise, Bombay - 1989 (40) E.L.T. 280 (SC) = (1989) 1 SCC 602, the crude PVC films as produced by the appellants were not known in the market nor could they be sold in the market. Sabyasachi Muk-harji, J., as he then was, while considering the submission that it was only the goods as specified in the Schedule to the Act that could be subjected to the duty in para 6 observed : "For articles to be goods these

must be known in the market as such or these must be capable of being sold in the market as goods.

Actual sale in the market is not necessary, user in the captive consumption is not determinative but the articles must be capable of being sold in the market or known in the market as goods. That was necessary." The appellants themselves have called the goods "Tie Bar Nuts" and those are admittedly used for fixing platens at appropriate distances. It cannot be said that the Tie Bar Nuts after their manufacture did not constitute goods; their actual sale in the market was not necessary." 8. In the case of Jaishri Engineering Co. (supra), the Supreme Court had observed that High Pressure Connectors meant for lubricating purposes were classifiable under Item 52 as 'nuts' and not under Item 68 as integral parts of diesel engine pipes. If the principles dealt with in these decisions are applied to foundation bolts, it would appear that the goods are performing the function of fastening the machinery of material handling equipment to the foundation and they are known by the name of 'foundation bolts'. The fact that they arc used captively and not sold is also not material in view of the decision in the Plasmac Machine case (supra). The ratio of the Supreme Court decision in the Calcutta Steel Industries case as well as in Bhor Industries case (supra) that it is for the Department to prove that the goods are excisable and pass the common parlance test had been fully discharged by the authorities. In these circumstances, the respondents herein do not have a case and the Department's appeal is therefore, allowed.