

Collector of Central Excise Vs. Kramp Products

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-23-1991

Reported in : (1992)(41)LC530Tri(Delhi)

Judge : S Bhatnagar, Vice-, J Balasundaram

Appellant : Collector of Central Excise

Respondent : Kramp Products

Judgement :

1. These are the appeals filed by the department against the orders of Collector (Appeals) No. 21/87 dated 28.1.1987 and No. 150/87 dated 30.6.1987.
2. The learned DR stated that the dispute relates to classification of the respondents' products. The rival entries are 85.46/85.47 and 6804.90. The department's contention is that they are classifiable under 6804.90 as asbestos cement products on the grounds mentioned in the appeal.
3. The learned Counsel drew attention to the cross objections filed by them. He reiterated the contention that the goods are classifiable under 85.46/47 as the items are electrical insulators/insulating materials and fittings.
4. He also drew attention to the definition of the word 'insulators' in Longman's dictionary and extracts from 'Engineering Encyclopaedia' the materials hand book I.S.I, specification, the B.T.N. and the case law.

5. We observe that the appellants had filed a classification list seeking classification of their products described at S. No. 1 under heading 85.46.00 and the product at S. No. 2 under heading 85.47.00.

However, the Assistant Collector did not agree with them and classified the goods instead under heading 6804.90.

6. It is also observed that in response to the assessee's letter dated 2.5.1986 the Assistant Collector had written a letter dated 18.7.1986 informing that the goods are 'Asbestos Cement Products' correctly falling under Heading 6804.90; And it appears that he had approved the classification accordingly on 18.7.1986.

7. We also note that the learned Collector (Appeals) had observed, inter-alia, that the order of the Assistant Collector is not a speaking order, but he went on to consider the case on merits and accepted the appeal of the respondents holding that the goods were classifiable under Heading 85.46.00 and Heading 85.47.00 as electrical insulators and insulating fittings respectively.

8. We find that in so far as the classification list DS No. 80/86-87 is concerned, the Assistant Collector has approved the same on 18.7.1986 and all that we have in the place of order-in-original, is the letter dated 18.7.1986 which does not give any reason for the view taken therein for modifying the classification list. As such the learned Collector (Appeals) was correct in saying that the Assistant Collector had not passed a speaking order. In fact there is no indication in this communication as to whether a show cause notice was issued or a hearing was granted and the Assistant Collector's action appears to be purely administrative action.

9. His letter dated 18.7.1986 read with his order on the classification list cannot be considered as a proper Order-in-original by any imagination and as proper procedure has not been followed and the principles of natural justice have not been apparently observed, therefore this decision of the Assistant Collector was liable to be set aside on this ground alone. The learned Collector (Appeals) has however proceeded to deal with the matter on merits on his own and it is not clear, in the absence of any discussion or any reference to any evidence in the order in original, as to what was the material before him and why he did not remand the

matter to the Assistant Collector. We also note that this order had been passed on 28.1.1987 while in an identical matter before him in respect of the same items and the same period, he had remanded the matter for de novo consideration to the Assistant Collector vide his order dated 30.7.1986 as mentioned by the Assistant Collector in his order dated 3/9.3.1987.

10. In respect of the second classification list DS/80/86-87 (subject matter of appeal No. E/1492/87 before us). In respect of the second classification list No. DS/12/86-87 (Subject matter of appeal E/2801/87 before us) a detailed order has been passed by the Assistant Collector and the Collector (Appeals) has also given his reasons differing from the Assistant Collector. However, both these orders are defective as would be seen from the following discussion.

11. From the appeal memo, the cross-objection as also the submissions made by both the sides before us during the course of hearing it appears that basically two related issues are involved.

1. Regarding the essential characteristics of goods (for determining as to what they actually are).

As regards the nature and type of goods, in order to determine whether they were in fact electrical insulators/insulating fittings as claimed by the respondents in the classification list or merely Asbestos cement products as claimed by the department, it was necessary to first investigate and find out whether they possess essential characteristics and features of products normally considered as electrical insulators/electrical fittings and used as such or were known to the market as asbestos cement products and were treated as such. However, there was no reference to any test report or enquiry in the impugned orders.

12. The respondents have given details of processes used by them and the characteristics of the articles. However they have not substantiated their contentions by acceptable evidence. The certificates and the opinions produced by them do not help their cause as such documents which do not indicate the parameters or the basis of the opinion have no evidentiary value. In the circumstances the case law cited by the learned Counsel also does not advance

the case of the respondents.

13. Further, a reading of 85.46 and 85.47 shows that the Tariff prima facie, distinguishes between 'electrical insulators' and 'insulating fittings for electrical machines, appliances and equipments' from 'insulating material' of which they are made of, and therefore, purely the dictionary meaning or the descriptions in Encyclopaedias and books on materials by themselves were not sufficient. It is also seen from a perusal of 85.46 and 85.46 (sic) of the HSN that the terms electrical insulators of any material and insulating fittings for electrical machines, appliances or equipments have been used in a specific sense which has been explained and elaborated therein. In other words the Central Excise Tariff as well as HSN distinguish articles made of insulating materials and meant for specified use(s) from the insulating materials themselves of which they are made of and therefore the general purpose of technical literature and dictionary meaning giving wider connotation were of no avail.

14. These aspects were required to be kept in view while holding the enquiry/investigation and adjudicating the case.

15. As it is clear from the above discussion that neither at the Assistant Collector's level nor at the Collector (Appeals)'s level the matter has been properly examined and both the orders are defective, we set aside the impugned orders and remand the matter to the Assistant Collector to consider the matter afresh taking into account, inter-alia, 15A. He should see to it that a proper show cause notice is issued, a hearing is granted and the matter is decided after due enquiry and proper examination of evidence adduced before him, and pass a speaking order in a proper way in the form of a formal adjudication order.

16. With these observations and orders, the appeals and the cross objection are disposed of.

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