

Echjay Industries Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-24-1993

Reported in : (1994)(72)ELT98TriDel

Appellant : Echjay Industries Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This appeal arises from the order-in-original passed by Collector of Customs and Central Excise, Rajkot dt. 9-2-1990. By this order the learned Collector has held that the appellants herein, had misdeclared the goods namely "Rolled Tyres for MG Wagon for Railways" as "pieces roughly shaped by rolling or forging of iron or steel, not else where specified" under Chapter 72, sub-heading 7208.00 but on actual verification of the said goods as well as purchase orders, contracts with Railways, Inspector Report, Invoices and gate passes and RT 12s the officials of the department are said to have found them to have actually despatched "Rolled Tyres for MG Wagon for Railways" which merited classification under proper heading as "Parts of Railways or tram way locomotives or rolling stocks under Chapter 86, sub-heading 8607.00 at the duty rate of 15% Adv. Therefore, the learned Collector, after detailed examination of the entire evidence on record and after duly considering the appellants pleas, confirmed a duty demand under Rule 9(2) of Central Excise Rules, 1944 under TI 68 of erstwhile first schedule of Central Excises and Salt Act, 1944 for the period 1-8-1983 to 24-9-1986 and thereafter, under sub-heading 8607.00 of Central Excise Tariff Act, 1985 for the

period 29-5-1986 to 24-9-1986 under the proviso to Section 11A of the Act. He held that the duty of excise already determined and debited, if any, from PLA on the said goods (not being debit payment from RG-23A Part I & II) shall be admissible for adjustment against the amount of duty to be paid in terms of his order under sub-heading 8607.00 of the CET Act, 1985. The learned Collector further ordered for confiscation in terms of Rule 173Q(1) of Central Excise Rules, 1944, as amended 761 nougs of rolled metal tyres valued at Rs. 19,98,690.40 and seized on 25-9-1986. As these seized goods had been released provisionally, the learned Collector determined a levy of redemption fine of Rs. 2 lakhs, which he ordered for adjustment out of the security deposit and by way of enforcement of the bond. He also confirmed duty on this seized goods amounting to Rs. 2,99,803.50 under the said tariff sub-heading. He dropped further proceedings in respect of the demand of duty proposed in the Show Cause Notice dt. 20-3-1987 in respect of rolled metal tyres manufactured and cleared during the period 25-6-1982 to 31-7-1983. He ordered for disallowing Modvat credit of Rs. 3,85,507.62 availed by the appellants during the period 29-5-1986 to 24-9-1986 on inputs utilised in the manufacture of rolled metal tyres without following the prescribed procedure under Modvat rules in terms of Rule 57-1 of Central Excise Rules and also confirmed a duty amount of Rs. 3,85,507.62 said to have been utilised irregularly towards the payment of duty on the rolled metal tyres from out of the modvat credit availed. The learned Collector imposed a penalty of Rs. 15 lakhs under Rule 173Q (1) of CER, 1944 as amended; and also imposed a penalty of Rs. 25,000 on Vinodchandra Desai, M.D. of the appellants company and Rs. 10,000 on Sh. R.K. Bhatnagar, General Manager of the company.

(i) The appellants were issued with a Show Cause Notice dt.

6.11.1986 by Superintendent of Central Excise A.R. HI Rajkot under Section 11A of Central Excises and Salt Act, 1944 demanding duty of Rs. 23,13,785.50 for the period 29-5-1986 to 24-9-1986. In this Show Cause Notice, it is stated that the appellants had got approved the Classification Lists of "Pieces roughly shaped by rolling or forging of Iron or Steel, not elsewhere specified" under Chapter 72, sub-heading 7208.00 and on actual verification of the goods as well as purchase order of the same goods, Inspection Report and invoices, Gate passes and RT 12s, it

revealed that the party had actually despatched "Rolled Tyres for MG Wagon for Railway" which merited classification under proper heading as "Parts of railway or tram-way locomotives or rolling stock" in Chapter 86, sub-heading 8607.00 at the rate of duty of 15% ad valorem. Thus it was alleged that the appellants had cleared the Rolled Metal Tyres from 29-5-1986 to 24-9-1986 under Chapter 72, sub-heading 7208.00 which is not proper and correct, as the correct classification would have been under Chapter 86, sub-heading 8607.00 and accordingly duties shortly levied as calculated as shown in Show Cause Notice from May 1986 to September 1986 were demanded. They were further to state as to why the classification of the said goods should not be revised under sub-heading 8607.00 and the differential amount of duty should not be recovered.

(ii) However, this Show Cause Notice was not given effect to, but this was replaced by another Show Cause Notice dt. 20-3-1987 issued by the Collector of Central Excise, Rajkot for still larger period and at para 32 of the Show Cause Notice, it was stated that the period indicated in the Show Cause Notice dt. 6-11-1986 by Supdt. is also included in the present Show Cause Notice.

(iii) Show Cause Notice dt. 20-3-1987 issued by Collector of Central Excise, Rajkot runs to about 42 pages accompanied by list of documents listing 24 documents. The copies of all these documents were also given to the appellants.

(iv) It is stated in this Show Cause Notice dt. 20-3-1987 that the appellants are manufacturers of various types of Iron & Steel, forged, Semi-machined and machined under the licencing control of Assessment Range II & in of Rajkot division, and that they were holding Central Excise licence. They had filed number of classification Lists during the period 1980 till Budget 1986 and also after 1986 and the same had been approved. They had filed Chapter No. 1/80 effective from 4-6-1980 which was duly approved by the department, in which they had mentioned at Item No. 7 as "Railway Tyres and other forgings for Railway Machined" under TI 68.

In the same classification, as the back at Item No. 2, the party had mentioned various iron and steel products, forged, shaped and sections, forged and machined Oil Engine Components and other items falling under Tariff Item

26AA(ia) and shown separately and filed with Superintendent of Central Excise. In the remarks column No. of the said classification list the assessee had mentioned "exempted vide Notification No. 54/64 dt. 1-3-1964 as amended by Notification No. 164/78 dt. 9-9-1978.

(v) The Show Cause Notice mentions in detail filing of classification lists No. 25/80 after Budget of 1980, effective from 19-6-1980 which had been approved by the department and also classification list No. 2/82-83 effective from 1-4-1982, which was also approved. Classification List No 3/82-83 effective from 24-9-1982 claiming exemption under Notification No. 206/63 dt.

30-11-1963 as amended by Notification as 103/81 dt. 1-4-1981 which was also approved. Classification List No. 25/83-84 effective from 1-3-1983 which was approved including classification list No. 26/83-84 effective from 1-8-1983, Classification List No. 30/84-85 effective from 12-11-1984; Classification List No. 36/84, Classification List No. 49/85, Classification List No. 152/86, Classification List No. 26/86, Classification List No. 105/86, Classification List No. 159/86 w.e.f. 29-5-1986.

(vi) It is stated that the department noticed that the assessee had started clearing Rolled Metal Tyre for Railway under TI No. 26-AA(ia) as per classification List No. 3/82-83 in the month of June, 1982 claiming exemption and prior to June, 1982, there was no clearance of such type of Rolled Metal Tyre for Railway under the above mentioned Tariff.

(vii) It is stated that they had deliberately suppressed the facts by wilful mis-statement in as much as that the Item No. 7 mentioned in the Classification List No. 152/86, dt. 28-2-1986 and onwards till the last Classification List No. 159/86-87, dt. 29-5-1986, i.e.

Railway Tyres and other forgings which had been classified under TI 68, was in fact required to be classified after the Budget of 1986, under Chapter 8607.00. It is alleged that even prior to Budget of 1986, though the Railway Tyres were classified under TI 68, no clearance was affected by the assessee under TI 68 and no proper duty was paid thereon since June 1982. They had instead cleared

'Rolled Metal Tyre' throughout the above mentioned period under the exemption Notification No. 206/63, dt. 30-11-1963 as amended and thereafter under Notification No. 208/83, dt. 1-8-1983 under Item No. 2 mentioned at the back of the Classification List prior to Budget 1986 under the headings "Various Iron & Steel products, forged, shaped and sections etc. under TI 26AA(ia) as well as TI 25(8)". It is stated that even after Budget 1986, up to 28-5-1986, they partly had taken the clearance under Chapter heading "Pieces roughly shaped by rolling or forging of Iron or Steel, not elsewhere specified" by mentioning new Classification List under Chapter sub-heading No. 7208.00 in lieu of old Tariff Item 25(8) and continued availing the exemption under Notification No. 208/83, dt.

1-8-1983 as amended by Notification No. 79/86, dt. 10-2-1986.

(viii) It is stated in the Show Cause Notice that after formal inquiry by superintendent of Central Excise (P & I) the Asstt.

Collector of Central Excise, Rajkot visited the licenced premises of the party on 25-6-1986. They seized 761 Rolled Tyres in fully manufactured condition valued at Rs. 19,98,690.40/- involving a duty amount of Rs. 2,99,803.50/-. The documents were also seized. The statements of following persons were recorded on several dates. M.N. Kumta V.P. of the appellant company, E. Mohmedali Hamza, Chief Engineer, B.K. Mathur, Asstt. Inspecting Engineer of M/s. Rail India Technical and Economic Service Ltd., A.P. Ban, Asstt. Collector of Stores, Western Railway, A.V. Bhakta, Junior Shop Superintendent, Wheel Shop Western Railway, Shri Lalji Savji, Chargemen of Blacksmith shop, Western Railway Workshop, Shri M.P. Tiradiya, Workshop Superintendent, Western Railway, Shri R.K. Bhatnagar, General Manager of the Company, Shri B.S. Waaras, Incharge Fettling Shop, Shri Edward Casteline, Incharge, Machine Shop, Shri K.P. Gandhi, Incharge, Ring Rolling Deptt., Shri R.M. Parmar, Sr. Depot Store-keeper, Shri Shashikant V. Parekhe, Asstt. Superintendent, Machine Shop, Shri Vinod Harilal Doshi, Managing Director of the Company. The Deptt. also took Experts Opinion of Shri P.P. Bhadresa and that of Prof. A.R. Kachhala, Professor & Head of Mechanical Engineering Deptt. and Prof. P.D. Vyas, Asstt. Prof, of Mechanical Engineering Dept. of Morvi, L.D. Engineering College, Morvi.

(ix) By these evidence the Deptt. has alleged that the impugned goods are not roughly shaped by rolling or forging process but they are proof machined and that only fitment process were required, which was done in Railway Workshop. That the fitment process were on a fully finished product. It was alleged on the basis of the evidence of Railway Officials and experts that the railways did not conduct any manufacturing operation on railway tyres and the processes carried out are only for fitting the tyres on loco wheels, and that such operations were only minor operations for fitting.

Therefore, the Deptt. alleged that the assessee had by wilful mis-statement and suppression of facts and with a deliberate and wilful intent to evade payment of CED mis-classified their product namely Rolled Metal Tyres for Railways, as rolling or forging of iron and steel, not elsewhere specified and cleared the said excisable goods, without maintaining statutory records and without following the Central Excise procedure and without payment of CED.³ The assessee filed their detailed 39 page reply dt. 4-6-1987.

Besides denying the charges of suppression and wilful mis-statement, they asserted that the product was not in a fully manufactured stage and the process carried out at the Railway Workshop was not merely a fitment process but they were substantial process of finishing as per Technical Drawing carried out by processes of turning, milling & other operations. They relied the Board's circular in F. No. B-35/21/75-TRU dt. 23-9-1975, wherein it had been classified that mere machining/polishing etc. did not convert the crude forged product or crude casting into an identifiable machine part and that by itself would not bring the goods under Tariff Item 68. They also relied on the Appellate Collector's own decision in order No. V(68)/1520/82/13764, dt. 26-2-1985 given in their case, which was based on the said circular. They relied on the following rulings to assert that the issue had been fully examined by the Tribunal, Hon'ble Supreme Court and those of High Courts and hence the same would apply in their case also: Steel Authority of India v. Collector of Central Excise - 1985 (22) E.L.T. 487 (ii) Metal Forging (P) Ltd. v. Union of India -1985 (20) E.L.T. 280 (Del.) Tata Yodogwa Ltd. v. Asstt. Collector of Central Excise -1983 (12) E.L.T. 17 (Patna) Tata Iron & Steel Co. Ltd. v. Collector of Customs -1983 (13) E.L.T. 1113. Tata Engineering & Locomotive Co. Ltd. v.

3.(ii) They submitted that their product would continue to be considered as forged product falling under Tariff Item 26AA or Tariff Item 25(8) as the product had not attained the stage of finality. Mere proof machining or machining to achieve the specifications of the forged product i.e. the dimensions required at the forging stage that by itself did not make them a different and complete product classifiable under Tariff Item 68. They submitted that this position had not been challenged in the show cause notice by the department.

They contended that only processing done by them consists of proof machining of one face to remove a thin part of surface material in order to smoothen the surface and thereby to permit testing of integrity of the steel and of the internal diameter. We to bring the internal diameter within the tolerance prescribed for the forged and rolled size of the product. It is asserted by them that the internal diameter is not machined to the final size required and the amount of tolerance permitted in the internal diameter of upto 6 mm is fairly large. They pointed out from the show cause notice that it is the department's case that the rolled metal tyre is a semi-finished tyre which had some of the essential characteristics of the finished tyre.

They state that it is not the department's case that the rolled metal tyre is a finished tyre ready for use as tyre without any further machining or processing. They state that the rolled metal tyre is not an identifiable component or machine part and therefore its classification under Tariff Item 26AA(ia) or TI 25(8) is correct.

3.(iii) They submitted that the external diameter is not even machined the grooves are not cut, the other dimensional charges and the charges of the profile including the machining of the flanges are not done and at that stage the rolled metal tyre can only be referred to as a piece roughly shaped or a forged shaped and section of iron & steel. They have also referred to the drawings of the tyre in its rolled stage and the drawings of the tyre in its finished stage together with a summary of the dimensions of the tyre in the rolled stage and in the finished stage and of the permitted tolerances in respect of Meter Gauge Wagon tyre, Broad Gauge Wagon Tyres. Thus Meter Gauge Wagon Tyres indicate the following further processes are done by the Railways : (a) Reduction of outside diameter by 5 mm to 11 mm

(note no machining of outside diameter is done by the company).

(b) Increase of inside diameter by 8 mm to 14 mm (Note: This has to be done by a great degree of precision to fit the wheel and the degree of precision can only be achieved by the railway workshops as they have the requisite precision machinery).

(d) Reduction in the height and thickness and profile of the flanges.

They state that there are a number of dimensions for which there are specifications in the finished tyre which do not exist in the rolled tyre. Hence they state that the identifiable component viz. Metal Tyre is manufactured by the Railway Workshops out of the rolled metal tyre manufactured by the company. They have relied on the additional Executive Director of the Railway Board has in a certificate issued to the company confirmed the extent of processing done by the Railways which states : "Certified that the Ministry of Transport, Department of Railways buy from M/s. Echjay Industries Pvt. Ltd. (Echjay Steels Division), Rajkot, rolled tyres for wagons & locomotives which are rolled forgings for conversion into finished tyres by the Railway Workshops. The forgings are made to Drg. No. W/TY-772/R. The Workshops convert these into tyres for use as parts of locomotives and wagons which are distinct articles made to a finished drawing No. W/TY-772. The process involves substantial machining resulting in material changes in dimensions and profile and making recesses and a groove an essential features of a tyre for fitting a glut ring in the tyre which is indispensable for its use. The rolled tyre may be proof machined on some surface to facilitate quality testing".

They also take support from the contents of the show-cause notice itself, of the fact that the ultimate machining is done by the Railways.

3.(iv) They have pointed out that the dispute of the classification of this product commenced sometime in September 1986 and since then the company had made number of submissions wherein time and again they had referred to the various judicial decisions. The show cause notice is silent about these facts and hence the issue of the show cause notice with all allegations of wilful mis-statement and

suppression is not at all sustainable.

3.(v) They also assert that the goods would be classifiable under Chapter Heading 7208.00 which reads similar to TI 25(8). They also state the show cause notice does not give any reasons as to why the classification under Heading 86.07 is to be considered as correct one.

They state that the classification list had been approved under Chapter sub-heading 72.08 after due verification and hence suppression cannot be alleged. They have also pleaded that Note 2(a) of Chapter 86 is irrelevant as the note only specifies that Metal tyres are parts of railway or tramway, locomotives or rolling stock. They state that it is an undisputed position that metal tyres are such parts but not rolled forgings for metal tyres and that the goods are not metal tyres capable of being used as parts of railway locomotive or rolling stock, as they require significant processing before they are capable of such use and hence would not fall under sub-heading 8607.00, as the goods are not "metal tyres" but rolled products capable of being converted but "metal tyres". They have strongly placed reliance on the opinion of a Consulting Engineer Shri Kasy Aiyer, who had served in the Railways as Chief Rolling Stock Engineer and held other posts. In his opinion, he had confirmed that (a) Machining carried out by the company is limited to the completion of forging.

(c) No operation subsequent to forging is carried out by the company.

(d) The rolled metal tyres only have the rough shape of a tyre, but do not have the essential features of a tyre.

(e) Several machining operations have to be carried out by the Railway Workshops to incorporate various essential features, as en-numerated in the opinion.

The assessee also relied on several technical books and literature in support of their pleas. They have also assailed some statements of railway staff, which according to the company have been given out of ignorance and the same is belied by other evidence on record. They state that the opinion of experts is also

not conclusive on the issue.

3.(vi) They have given a very lengthy explanation to show that there had been detail excise audit from 1982 onwards and all the goods & records challans of the rolled metal tyres, invoices had been checked.

They had no scope to evade duty as the price charged by them was inclusive of excise duty and the price was fixed as per the announcement/notification of J.P.C. (Joint Plant Committee, a body comprised of representatives of the main producers of steel and the Govt. of India). The Department was fully aware of all these facts and hence the larger period was not attracted and the demands were all time barred.

4. The Id. Collector permitted the appellants to cross examine the expert witnesses and also produce their evidence. After a careful examination of their case, by a detailed order rejected their pleas and confirmed the order. The Id. Collector has confirmed that the impugned goods are same as the goods supplied by M/s. TISCO to Railways. The Id. Collector has also referred to the Hon'ble Supreme Court holding in TISCO's case as goods classifiable under T.I. 26AA(ia) and hence applying the ratio of this judgment held the goods to be classifiable under TI 26AA(ia). He has also very clearly held in para 6.4 that "there is no question of any mis-classification. As observed in para 5.0 above, the show cause notice also only alleges that the impugned product has been classified under T.I. 26AA(ia) claiming exemption under Notification 206/63, dt. 30-11-1963". The Id. Collector has held that after the introduction of the new tariff, the scenario had undergone a change with reference to tariff entry on ferrous metal after 1-8-1983. As the facts of the issue being different subsequent to 1-8-1983, the ratio of the decisions of Hon'ble Supreme Court in the case of TISCO will not automatically apply for the subsequent period. He has held in para 6.8 to 6.12 as follows : The Id. Collector has also examined the contention regarding applicability of note 2(a) and has rejected the same in Para 6.22. The said para is noted herein below: The Id. Collector has held that larger period is attracted and has justified the same by giving his own reasoning.

5. We have heard Shri Gautam Doshi, Id. Chartered Accountant for the appellant on several dates of hearing and Id. SDR, Shri B.K. Singh. In the meantime, several appeals on similar issue were also heard and order was pronounced in the case of Aravali Forgings Ltd. and Ors. v. Collector of Central Excise in Order No. E. 232 to 242/93-B1, dt.

23-8-1993, reported in 1994 (70) E.L.T. 693 (Tri.) The Id. Chartered Accountant pleaded that the ruling would apply in all fours in this case also and that there is no reason to differ from the same. He also forcefully argued that even on independent appreciation of the evidence alongwith technical literature produced and referred by him in his argument it would be conclusively established that the impugned goods were only forged ones and not in fully finished stage, to enable its classification under sub-heading 8607. He also pleaded that the department having consciously approved the classification list; and the matter having been adjudicated also, there cannot be any question of suppression of facts. The assessee had submitted classification list on 21-4-1980, which had been returned by Supdt. of Central Excise by his letter dt. 5-5-1980. They had again and again submitted the classification lists but the Supdt. of Central Excise kept on returning the same on the ground that they were first required to obtain licence and only then apply for classification list. As they were exempted from paying duty, they had not done so. Although they had been filing classification list subsequently which had all been approved. They had not intention to evade CED, as the pricing had been fixed by JPC and the Railways were to pay the Excise Duty. The Id. Collector had clearly held that there was no misclassification prior to 31-7-1983.

6. Id. SDR's main contention had been that the understanding even as per the parties and description of goods in the contract was "Railway Tyres" and not as forged goods. The item had clearly acquired the characteristics of the final goods and that note 2(a) of the Chapter 86 was clearly applicable in the present case. He argued that the description in the drawing was amended only subsequently by letter dt.

5-6-1984 by Govt. of India, Min. of Railways (p. 161, 162 and 163 of paper book) to read as "1. Steel forged/rolled MG carriage and wagon stock with stampings as

shown in the drg. No. W/TY. 772/R alt. 3". He pointed out to the statement of Chief Engineer at pages 151-153 of paper book to show that the processes were beyond the process of forgings and hence the item is definitely a machined one and requires to be considered as "Railway Tyres" and not forged products. He also referred to the replies given by the experts at pages 403 to 412 of paper book of Prof. A.R. Kachhala, Shri Bhadresha, Chartered Engineer, Tiradia Shop Supdt. of Western Railways, to emphasise his point that the goods had undergone machining. He argued that only fitment activity was done in the railway workshop and such activity did not change the identity of the goods and hence the ruling of the Hon'ble Supreme Court rendered in the case of Pefco Foundry Chemicals Ltd. v. Collector of Central Excise, reported in 1992 (58) E.L.T. 565 is directly applicable to the facts of the present case. He submitted that note 2(a) would apply and the ruling rendered in the case of TELCO v. Collector of Customs as reported in 1990 (50) E.L.T. 571 would apply on this point.

He also relied on the ruling rendered in the case of Central Railway Bombay v. Collector of Customs, Bombay 7. Shri Doshi reiterating his earlier arguments countered by arguing that the goods were referred as 'rolled stage' ones and not as finished goods. The drawings would clearly indicate that the goods were in rolled stage only. He referred to the evidence pointed out by Id. SDR and argued that even as per this statement it was clear that several machining and finishing activities besides fitment processing were done at Railway Workshop as per the drawings and therefore, there was not incriminating in the statement of these experts. The experts had also clearly admitted that in the Railway Workshop dimensional change upto 5 mm was done on both sides of the product that would come to about 10 mm and hence the product continued to remain as a forged one. He also pointed out that the evidence of Shri Aiyer had not challenged by department by cross examination. He also referred to the certificate issued by Railways had also certified the goods as a forged product.

8. We have carefully considered the pleadings made by both sides and perused the entire evidence and records before us. It is admitted by the Id. Collector that the item in question is similar to the goods as in the case of TISCO, which has been finally decided by Hon'ble Supreme Court and the Id. Collector has

respectfully followed the said ruling and has held the goods as classifiable under TI 26AA(ia) upto 31-7-1983. He has also clearly held that there has been no misclassification upto this period. However, the Id. Collector has held that after there is change in tariff structure, after 1-8-1983 and hence TISCO'S ruling would not apply from this period. We have already extracted his findings supra. Ld. SDR pointing out from the order pronounced in the case of Aravali forging submitted that even as per this pronouncement, it was clear that application of note 2(a) had not been ruled out completely and it had been made rather very clear that Trade Understanding of the product is a good criteria. Therefore, on the basis of the evidence available on record, he pleaded for accepting the findings of the Id. Collector. Therefore, the issue boils down to this (i) as to whether there is suppression or wilful mis-declaration on the part of the appellants (ii) as to whether the impugned goods are fully finished ones and whether only fitment processes were done at Railway Workshop and as to whether they are to be classified under sub-heading 8607 by virtue of note 2(a) or whether the goods are still forged and rolled ones despite a few dimensional machining process as admittedly carried on by the appellants.

9. As we have noted, after substantial hearing of this appeal, we had in the meantime pronounced the ruling in M/s. Aravali Forgings' case Ld. Chartered Accountant has pleaded that the ruling would apply to the facts of this case. The findings given in Para 22 to Para 24(iv)(j) is noted herein below : 10. As can be seen from the above findings most of the arguments raised in the appeal have been dealt with and these findings would be applicable here to this appeal also and we do not see any reason to differ from the same and we apply the ratio of the above said ruling to this case also.

11. Ld. SDR has pointed out that the evidence in this appeal would lead to a different conclusion, inasmuch as that there is a clear trade understanding of the goods in this case, to show that the impugned goods is not a forging. He has also pointed out to the evidence of the experts and the Shop Superintendent of Railway Workshop and thus has pleaded that note 2(a) of Chapter 86 would clearly apply to this case.

We have already extracted the letter of Railways at para 3(iii) above.

The gist of the opinion of Shri S. Kasy Aiyar is also noted above. Both these two evidences are not controverted but the Id. Collector has preferred to accept the evidence of Shri Sasi Kant Vithal Parkhe, Asstt. Supdt. Machine Shop, who had stated that they do not conduct any manufacturing operations regarding railway tyres for loco wheel received in their unit at Pratapnagar Workshop. The letter dt.

24-11-1986 of Addl. Chief Mechanical Engineer Workshop, Hubli is also relied, wherein it is stated that the process carried out is for fitting up of rolled metal tyres to meter guage railway. The statement of Tiradia dt. 1-10-1986 Workshop Supdt. Western Railway recorded before Asstt. Collector is relied, wherein he had stated that "in our Workshop whatever operations mentioned above are for the process for fitting the tyres on wheel rim which are used by the railway. We do not carry out any manufacturing operations of tyres in our workshop. A portion of his reply in cross examination is also relied by Id.Collector. The Id. Collector has rejected the certificate dt.

13-10-1986 of Additional Director of Railway Board which states that the rolled tyres for wagons and locomotives purchased by them and converted in the workshop into tyres for use as parts of locomotives and wagons, involved substantial machining, resulting in material changes in dimensions and profile and making recess and a groove, an essential feature of a tyre for fitting a glut ring in the tyre which is indispensable for its use. Thus, the Id. Collector has not chosen to consider the voluminous techinal literature and all the clarificatory replies begin in the cross examination by the experts and railway staffs. Thereby, the impugned order surfers from illegality and this by itself is a ground for setting aside the order. We do not see any reason to discard the certificate dt. 13-10-1986 issued by Additional Director of Railway Board, the evidence of Shri Kasy Aiyer, Shri Bhadresa, Chartered Engineer by his opinion dt 5-11-1986 (page 231. of paper book); whose opinion was taken by Asstt. Collector, has stated that: "Inside diameters of Rings was found to measure 593 to 595 mm in rolled condition prior to machining. This inside diameter was being machined to meaure 599 to 602 mm operator was found using a go guage to make the inside diameter of required size

as per drawing. One side face was also machined. External diameter was not being machined.

Thus all inside diameters are machined to remove excess material of about 4 mm to 7 mm to achieve the required size.

Rolled Metal Tyres which were said to be seized in supply condition are not roughly by shaped by rolling or forging process only".

Ld. S.D.R. relies on this opinion and the evidence of Prof. Kachhala & Prof. P.D. Vyas who have given the following opinion at page 232 of paper book: 2. Forged tyres are machined on a General purpose Centre lathe to convert them to required size. The lathe which is used is generally not capable to give accuracy to the extent of 0.5 mm.

(a) Metal removed to increase internal diameter of tyre is approximately 7.5 mm.

Difference in internal diameter of forged tyre and machined tyre was found as 15 mm.

(b) Metal removed from side face of forged tyre during machining process was 4 mm (minimum) to 6 mm (maximum).

4. Proof machining is generally done for just levelling the surface and finishing it. On forged tyres, there is no possibility of proof machining looking to the large differences in dimensions of forged tyre and machined tyre. The tyres are definitely machined.

5. Looking to photographs 6 and 7 supplied by Central Excise, we are of the firm opinion that these photographs are of machined tyre".

These experts were cross-examined. Prof. Kachhala and Prof. Vyas have admitted several facts and also they have not been able to reply to several material questions. Like for instance to a question: "Does the process of manufacturing of railway tyres require machining operation in addition to safety operation? A (Prof. Vyas) cannot be replied firmly" He was shown the two drawings and asked as to whether he agrees that there are number of dimensions

which can only be added by machining operations. He has clearly answered that: "Looking to the drawing, positive and negative tolerances which are appearing in the drawing are usually not tenable in hot rolling process, so machining is necessary" He has admitted that further machining is also necessary for achieving the norm size. To a specific question : "Would it be correct to refer to rolled tyres as finished products or metal tyres" the answer given is -- "Metal tyres. This cannot be called as finished products " (emphasis ours).

We note below the entire evidence in the form of question and answer appearing at pages 403,404,405,406 of paper book of Prof. Kachhala and Prof. P.O. Vyas: "Q. What machining operations are required to achieve tolerances at the rolled stage A. Facing, internal turning and external turning and also form turning and taper turning Q. Have you had occasion to examine the actual manufacturing process of the rolled tyres? Q. In the opinion given earlier, reference was made to machining of internal diameter and side facing only. Are the other machining processes such as machining of external diameter and taper turning referred to in reply to an earlier questions, necessary or find any evidence of such machining operations having been carried out on the rolled tyres inspected by you? A. At the time of physical examination of rolled tyres, (as referred to us as metal tyres) and finished tyres (as referred by us as machined tyres) were having the difference indicating facing on the sides and internal diameter only on rolled tyres. To be very clear we examined one piece of rolled tyres.

(It was clarified that the products seen by them were two. One was the product as it came from rolling process and the other product was, one supplies to the Railways after machining from M/s. Echjay Industries. The product received after rolling process is not a finished product, though the one obtained after machining and sent to Railways, is a finished product as per drawing 772-R) Q. In a number of cases the process of rolling or forging can't achieve the specified dimensions at the rolled stage. In such cases machining is carried out for achieving the dimensions at the rolled stage. Is such machining a part of the process of forging? A. Grinding, lapping, cold rolling and then finishing, i.e. Super finishing (grinding/finishing could result, in a component of this size, removal of maximum a mm. surface metal by process of turning or grinding, i.e. the extent of removal

permissible would depend depending upon of the size of the component).

Q. Referring to the drawings at the rolled stage and the norm size will indicate difference in sizes and tolerances for the internal diameter at the norm stage. The tolerances are nominal and diameter is larger. Would you consider machining operations carried out to achieve the rolled stage, part of the operation of forging or rolling as a part of the sub-sequent processes required to achieve norm stage

Q. In the opinion you have found that the lathe used by the company is not capable of giving accuracy to the extent of 0.5 mm. I am showing you a certificate given by the Lathe Manufacturers at page 158 of parties reply to the show cause notice, which indicates that the actual error in turning is .01 to .02 mm. Would it, therefore, indicate that the lathe can give accuracy subject to error of .01 only? A. No. Depending upon the size of the component and age of lathe, the permissible error varies and may not observe exactly as stated in the test chart of the manufacturer referred to above which is based on test piece and tested on 10-4-1980.

Q. Did you have occasion to carry out any test with reference to the factories lame before concluding that it could not give accuracy to the extent of 0.5mm? A. No. Accuracy of the lathe is not vital part of the opinion which is more with reference to the product as mentioned in Item No. 3 of our opinion (Annexure B-4(2) to Show cause Notice).

Q. Is it possible to form an opinion of the accuracy of lathe before actual test being carried out? Q. With reference to para 3 of the opinion, how many tyres were examined for the purpose of ascertaining the extent of machining? A. The opinion was based on samples of two tyres out of seized tyres.

Q. As the seized tyres were already machined, for the purposes of comparison which were taken into consideration or did you follow one or two particular tyres through out the process to examine the removal of material by machining at each stage A. We have selected machined tyres at random from out of seized tyres and compared them with the tyres received for rolling process in the factory and the difference of dimensions found were mentioned in para three of their opinion.

Q. What do you consider to be the purpose of the machining of side face? A. Not necessary to answer as it may be used or as per manufactures requirement.

Q. Is such machining normally done for the purpose of testing such as Ultrasonic testing? Q. In para 4 of the opinion it has been mentioned that machining is generally done for levelling the surface and finishing it, On what authority is this part of the opinion based Q. Considering the fact that the rolled tyres are to be further machined for manufacture of tyres to norm size, would thereby any purpose in levelling the surface at the rolled stage A. Whether machining is necessary after rolling is a question of requirement and as per the contract entered into by the parties.

Q. Would you consider the product examined by you, i.e. the seized tyres to have the essential feature of Railway tyre? A. Can't be said. For further amplification it may be clarified that we were asked to opine on the seized product which was rolled and machined confirmed to diagram W/TY-772/R which was different from the product received from rolling mill in the factory. Accordingly, we gave our opinion based on these two products and cannot state the use to which they may be put or whether they are ready for such use.

Q. Would you consider the process of comparing tyres from two different sets, one out of the seized tyres and one out of those which were rolled but not machined as being a satisfactory method of locating the extent of machining carried out on the machine tyres Q. Can the products examined by them be considered to be railway tyres ready for use on railways and described as parts of railway or tramway locomotives and for this purpose heading 86.07 to explanatory notes to HMS volume No. 4 shown to them? Q. Whether the product manufactured and cleared by M/s. Echjay Steel Industries as shown to them can be considered semi-finished product as defined in Chapter Note (ix) to Chapter 72 of C.E.T. (Extract of this definition shown to the witnesses).

A. No. The Definition contained therein relates to primary products such as barts, billets, slabs, angles channels, flats, plates, sheets etc. and not product obtained out of secondary manufacturing process as in the instant case.

Q. (They were also shown the definition of pieces roughly shaped by forging appearing on page 991, volume 3 of explanatory notes to HSN). Whether the tyres seized and shown to them can fall under the category of pieces roughly shaped, as given in HSN.11. As can be seen from the above evidence, it is clear that they have clearly admitted that the forged item and the finished is not the one and the same, several processes are required to be carried out, on the forged item. It is also seen that the witness have not answered a few questions and have given answers to the question pertaining to drawings as "It has got no relevance with the opinion given earlier". A reading of the entire evidence clearly shows that it is not helpful to the revenue and in fact it supports the case of the appellant. So also Shri Bhadresha in his cross-examination has clearly stated that he had examined only internal diameter of the product and had not seen the final finished product. Therefore, his evidence loses much weight. In any case he has agreed that to "the machining required to the rolled size to finished (norm size) is significant" and that "there is machining allowance kept to obtain norm size from rolled one". He also agreed that process of grooving and other locational machining is required to be done on the forged item. Although Shri Bhadresha stated that the machining operation carried out at the workshop to the extent of removing the metal of 4 mm - 7 mm is not to be considered as proof machining, yet he stated that the item is not roughly shaped by rolling or forging only. This last addition of Shri Bhadresha statement loses its significance and it becomes subjective opinion in the face of several admissions made by him regarding the several operations to be carried on the item. He was clearly admitted of not having seen the final product. Therefore, his admission with regard to the functions to be carried on the forged item, strengthens the stand taken by the appellant and his evidence is not at all helpful to the revenue.

12. Even Shri Tiradia Workshop Supdt. Western Railway has admitted that they receive rolled tyres and that they carry out several processes vis.

"groove for glut ring and groove for lip (purpose of glut ring and lip is to fasten the tyre over the wheel rim), champering on the corners, a little machining on the surface and V-groove for identification of wear limit." He has also stated that these processes are essential features for fitment to the wheel. He has also stated that

"some operations mainly profile machining which is very essential for safe running of the trains and which is being achieved after the tyre is fitted on wheel rim". He has clarified his earlier statement given to Asstt. Collector to mean that the railways do not make tyres to the rolled size. He has emphatically answered that the tyre would be complete only after the machining operations. He has also stated that "there is no improvement in quality or change in profile of the goods, excepting that the shape is altered by machining inner side of the tyre to suit fitment for the wheel rims and according to drawing W/TR-772 norm size". The Id.Collector has chosen a few words from this answer to conclude that there is no change brought about in the goods, totally ignoring the entire other admissions of the witness and the context in which this answer has been given. Undoubtedly the profile cannot be changed as it has to retain in that way itself. That is not the point in consideration. The profile is that of a wheel tyre in forged form. This has to undergo several changes as per drawing W/TR-772 for becoming fully fit for fitment and even after fitment several processes are required to be done. Therefore, the statement of Shri Bhadresha is not at all helpful to revenue. His evidence supports the case of the assessee.

(ii) As we have held that forged goods manufactured as per drawings by itself would not make them finished goods nor a few permissible processings being done on it would make them. In this case only internal dimensional corrections are done for carrying out a few tests.

This has been permitted in the Board's circular. The details of processes carried out at Railway Workshop is as per a separate drawing and the details of the functions are mentioned at pages 326 to 328 of the paper book. Therefore, going through these voluminous including the technical literature produced before us, it is clear that the impugned goods still remain as forged ones and it does not merit for classification under tariff sub-heading 8607.00 by the application of Note 2(a) of Rules of interpretation. Rule 2(a) states " any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, the incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by

virtue of this rule), removed unassembled or disassembled." A reading of this Note 2(a) with the evidence on record makes it clear that the goods have not attained the stage of essential character of the complete or finished goods. Mere mistake in referring in the agreement as 'Railway Tyre' by itself is not sufficient to consider the item as having the essential character of the complete or finished goods. Even this reference has been later amended by the letter dt.

5-6-1984 of Additional Director for Railway Store. This amendment has not been prior to show cause notice or after the visit of the officers of the department. Therefore, the evidence on record supports the assessee's stand. The ratio of rulings referred by the Id. S.D.R. in the case of PEFCO (supra) TELCO v. Collector of Customs -1990 (50) E.L.T. 571 and that of the case of Central Railways (supra) do not apply to the facts of this case.

13. The Id. Collector has given a clear finding that there was no misclassification prior to 31-7-1983 and he has dropped the demands.

But, he had done his best to somehow hold the assessee having wilfully misdeclared and suppressed facts for later period. We are not at all convinced with his reasonings. The classification list have all been approved from time to time. The description of the goods have clearly given in the classification list. Merely because the assessee quotes a different chapter heading, as that would be the correct one according to the, assessee; that by, itself is not at all a ground to hold that they had misdeclared the chapter headings and, therefore, larger period is attracted. It is well settled that the burden of classification is on revenue. It is not the allegation that the description of the goods given in the classification list has been wrong or misleading.

Therefore, the department having full knowledge of the goods being manufactured and cleared, and even having dropped earlier proceedings, to again allege that the misdescription of the chapter heading, is a ground to invoke larger period, does not make any sense at all. The demands are all time-barred. The department has not shown how the assessee had wilfully misdeclared or suppressed any fact. The findings given by Id. Collector is not at all sustainable. Therefore, the appellants succeed both on merits as well as on limitation. The appeal is allowed.

