

Workwell Engineering Co. Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-15-1994

Reported in : (1994)(72)ELT222TriDel

Appellant : Workwell Engineering Co.

Respondent : Collector of C. Excise

Judgement :

1. In both these appeals, the common question of facts and law is involved and hence they are taken up together for disposal as per law.

The question that has arisen for our consideration is the correct classification of the goods manufactured by the appellants i.e.

"domestic electric mills" (DEFM) on which the electric motor is fitted at the site. The original authority classified this product under sub-heading 85.09 of Act, 1985 while the appellants claimed the classification under sub-heading 84.37 of CET Act of 1985. The respective heading read as follows : 84.37 8437.00 Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables; 85.09 8509.00 Electro-mechanical domestic appliances with self-contained electric motor.

In the case of Workwell Engineering, show cause notice, dated 22-6-1990 was issued wherein it was alleged that Gharghanti valued at Rs. 15,53,779.00 for the period from 1-1-1990 to 31-5-1990 was cleared without paying the central excise

duty leviable thereon. It was alleged that the domestic Gharghanti manufactured by them is complete in all respects except fitting of an electric motor as required HP for which necessary arrangement has already been made in the Gharghanti.

Therefore, it was stated that the product is a grinder which falls under sub-heading No 85.09 of the Central Excise Tariff, 1985. Thus they have wrongly availed the exemption from payment of duty under Notification No. 111/88, dated 1-3-1988 as amended. It has also been stated that the appellants had not correctly declared the facts to the department while claiming exemption under the said notification and the product manufactured by them is an electro-mechanical domestic appliance with self-contained electric motor (Grinder) classifiable under the said sub-heading. Therefore they were called upon to explain as to why the Central Excise duty demand of Rs. 3,26,293.59 should not be recovered under provisions of Section 11A of Central Excises and Salt Act, 1944.

2. In the case of Meema Engineering Works, a similar show cause notice was issued alleging that they have cleared Gharghanti valued at Rs. 10,69,357/- for the period from 1-1-1990 to 31-5-1990 without payment of Central Excise duty leviable thereon. In terms of the said Show Cause Notice, they were asked to explain as to why the duty demand of Rs. 2,24,564.97 should not be recovered from them. The appellant had taken this stand that prior to the introduction of new Tariff, their product namely Gharghanti without motor stood classified under tariff entry 68 not as domestic electrical appliances. From 1-3-1986 they had sought classification with the said product under 8437.00. Their classification list was not accepted by the Anand Range and they were advised to file classification list showing their product as falling under 85.09, for the reasons that other manufacturers had filed classification list seeking classification under that heading.

Therefore, as desired by the range staff, they have filed the classification list under 85.09. They submitted that the Assistant Collector classified their product ex parte without notice. Their unit is a small scale one, they were eligible for exemption for the value not exceeding Rs. 15 lakhs during 1986-87 under Heading 8437.00 or for 84.37. From 1-3-1987, they have sought classification of their product under Heading 8437.00 vide Notification No. 111/88 which was approved on 25-10-1988

by the Assistant Collector, Anand and forwarded to them by the Range Office vide letter dated 17-11-1988. They submitted that from 1-3-1988 by Notification No. 111/88, goods fell under Heading 8437.00 and were fully exempted from duty, therefore, classification list seeking exemption was submitted on 3-3-1988 which was approved on 17-3-1988 by the Assistant Collector. They submitted that they again filed a declaration on 12-4-1989 and 12-4-1990. Despite the said facts, the Range Superintendent on 10-5-1989 had informed them that the product should be classified as Grinder falling under sub-heading 85.09 and is to be assessed in accordance with Notification No. 160/86, dated 1-3-1986. They submitted that they proceeded with the said direction of the Superintendent. They submitted that the classification of product without motor or with motor fell under sub-heading 8437.00 as flour mill machinery and therefore, classification should be confirmed under this heading as an item used in the milling industry. They also submitted that the show cause notice had ignored the classification of 1991 by granting exemption as provided in the Notification No. 175/86 as well as benefit of modvat credit and hence demand was not sustainable.

4. Assistant Collector rejected their contention and held that although the product was classifiable under Heading 8437.00 but it does not bar the department to modify the classification in view of the latest developments. It was held that from the structure of DEFM, it is seen that electric motor is connected by the V-belt to the shaft which located within the cabinet. Therefore, it will not be correct to view DEFM as without a self-contained motor. Therefore, the Asstt. Collector had held that the product of the party satisfies all the conditions of Section Note No. 3 of Chapter 85, since it is a food grinder or mixer as per the HSN Explanatory Note, Page No. 1345. The Asstt. Collector held that the condition No. 3(b) regarding the other machines commonly used for domestic purpose should be classified under this Chapter Heading No. 8509 provided the weight of such machines does not exceed 20 kg. and hence applied the Section Note 3 of Chapter 85. He held that the DEFMs are properly classifiable under Chapter Heading No. 8509 of the Central Excise Tariff Act. The Asstt. Collector has confirmed the duty for six months period only. In the Appeal, Collector had confirmed the order of the Asstt. Collector and has held that the product is for domestic use and that V-belt under Heading 8437 could not be applied to the appellant's product. He has also held

that Rule 2(a) of the Rules of Interpretation of the Excise Tariff Schedule should also apply and in that view of the matter, he has confirmed the order of the Asstt.

Collector.

5. In the case of Meema Engineering Works, the Asstt. Collector and Collector have passed a similar order as above.

6. We have heard Shri S.A. Sindhi, learned Consultant and Shri K.K.Dutta, learned JDR. Learned Consultant for the appellants submitted that the item in question would fall within the Heading No. 8437 within the meaning of the terms 'machinery used in milling industry'.

According to him, the said words need not necessarily refer only for commercial purpose but would also include those machinery which are used for domestic purposes and it should also be included therein so long as the machinery performs the function of milling of cereals, grains and seeds. The appellants submitted that the cabinet can only be used for domestic flour mill and does not have a characteristic electro-mechanical device nor it can contain motor. Therefore, it cannot be brought within the description of sub-heading 85.09. He submitted that cabinet is a part of flour mill of which the classification has to be considered only under sub-heading 8437.00. He submitted that Hon'ble High Court of Gujarat in the case of Balkrishna Ranchodlal Shah as reported in 1979 (4) E.L.T. (J 377) (Guj.), has held that Grinders (domestic) are not domestic electric appliances, if they do not have inbuilt electric motor; hence they are not liable to be classified under erstwhile Tariff 33C. As the Hon'ble High Court of Gujarat had held that these items do not come within the ambit of domestic appliances, therefore, their classification under sub-heading 85.09 as "electromechanical domestic appliances" is not appropriate. He relied on the findings given by the Tribunal in the case of Shri Vishvakarma (Emery Stones) Inds. (Pvt.) Ltd., Saradhana (Dist. Ajmer) v. Collector of Central Excise, Jaipur as reported in 1993 (21) ETR 150 wherein it has been held that Emery Millstones being fitted with frame work would fall outside the purview of sub-heading 68.01 and they should be appropriately classifiable under subheading 8437.00 and consequently the goods will be eligible for exemption Notification No.111/88.

7. Ld. JDR submitted that the classification adopted with the lower authorities is a correct one and he reiterated the findings.

8. On a careful consideration of the submissions, it is seen that the Honourable High Court of Gujarat in the appellants' own case had held that the goods were not classifiable as a domestic electrical appliances within the entry 33C of the erstwhile Tariff. The learned Counsel submitted that this view was also taken by the Hon'ble Madras High Court in the case of Collector of Central Excise v. Alco Industries as reported in 1991 (55) E.L.T. 184 (Mad.). Therefore, the question falling for our determination is the classification to be adopted under the new Tariff Act under different tariff descriptions.

The Revenue wants classification under sub-heading 85.09 as "Electro-mechanical appliances with self-contained as electric motor".

This tariff entry reads similar to the one under item 33C which reads - 'Domestic electric appliances not elsewhere specified'. Explanation-I: 'Domestic electrical appliances' means electrical appliances normally used in the household and similar appliances used in hotels restaurants, hostels, offices, educational institutions, hospitals, train kitchens, air craft or ships' pantries, canteens, tailoring establishments, laundry shops and hair dressing saloons". After a detailed examination by Hon'ble Gujarat High Court, the High Court came to the conclusion that Gharghanti which is a domestic grinder flour mill without any inbuilt electric motor is not attracted within the Tariff Item 33C of the erstwhile Tariff. This view was also confirmed by the Hon'ble Madras High Court. In the noted case the Hon'ble High Court had held that wet grinder is not a domestic electrical appliances. However, Hon'ble Supreme Court in the case of Nat Steel Equipment Private Ltd. v. Collector of Central Excise as reported in 1988 (34) E.L.T. 8 (SC) has held that 'Heavy duty electric appliances for use in hotels and canteens is to be classified under 33C of the erstwhile Tariff. In view of this ruling of the Hon'ble Supreme Court, both the rulings of Madras High Court and Gujarat High Court are deemed to have been referred to and overruled, although the Hon'ble Supreme Court has not specifically referred to the same. All the while the issue pertaining to the classification of domestic electrical appliances is not settled by Hon. Supreme

Court as classifiable under Tariff Item 33C, being an appropriate heading. Therefore, the rulings of High Court of Madras and Gujarat High Court cannot be made applicable to the facts of the present case.

8A. The ratio of Shri Vishvakarma cited above is also not applicable as the issue pertained to the flour mill, which is of a specific description as found in 8437.00, as against the description found in Heading 68.01. The Tribunal had taken into consideration the HSN Explanatory Notes which indicated that such stones will not fall under Heading 68 but would be classifiable under Chapter 84 or 85. The Tribunal also noted the Board's Circular on this issue. Therefore, Tribunal's ruling in M/s. Vishvakarama (Emery Stonnes) Inds. (P) Ltd. is clearly distinguishable. The present tariff item under which the Revenue has classified the item is under sub-heading 85.09 which reads - 'Electro-mechanical domestic appliances with self-contained electric motor'. In view of the clear ratio of the Supreme Court ruling in the case of Nat Steel Equipment Pvt. Ltd. (supra), the item has to be considered as an electro-mechanical domestic appliances, as the cabinet manufactured by the appellant is used for domestic flour mill that is Gharghanti. Therefore, the application of Section Note 2(a) of Section XVI by the lower authorities is justified. The parts of the Chapter 84 or 85 (other than that of Heading Nos. 84.85 and 85.48) are to be classified alongwith machinery. In this case, the item in question has to be classified along with the main machine i.e. domestic flour mill which falls under subheading 85.09 of C.E.T. Act. There is no dispute in this case that the item is being utilized for domestic purposes and therefore, the description under sub-heading 85.09 is the most specific to the description found under sub-heading 84.37, which applies to machine used in the milling industry. Machinery used in the milling industry cannot be considered as domestic items. Milling industry would clearly be a commercial industry and therefore, the item discussed in M/s. Vishvakarma (Emery Stones Inds. (Pvt.) Ltd. 's case pertained to the milling industry and the issue decided in that case being different, the ratio cannot be applied in the present case. In view of the Hon. Supreme Court in the case of Nat Steel Equipment Pvt. Ltd. and the description of erstwhile tariff being specific under sub-heading 85.09, the classification adopted by the lower authorities is to be confirmed. The appellants have claimed the benefit of modvat and also the benefit of clearances made below Rs. 15 lakhs as per SSI Notification No. 175/85.

This claim has not been considered by the Revenue. Hence the matter is remanded to the original authorities to consider their claim. Thus the Appeals are disposed of on the above terms.

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