

Sharpmax Engineers Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-27-1994

Reported in : (1994)(73)ELT134TriDel

Appellant : Sharpmax Engineers

Respondent : Collector of Central Excise

Judgement :

1. In both these appeals, common question of facts and law is involved, hence they are taken up together for disposal as per law. By a common order, Collector (Appeals) disposed of three appeals. Two appeals of the appellants and one appeal from the department on the same issue.

The Assistant Collector's Order-in-Original was also challenged by the Revenue and hence three appeals came to be disposed of, which are challenged before us. The Id. JDR, Shri S.K. Sharma, at the outset, submitted that the assessee should also file one more appeal, as three appeals had been disposed of by the Id. Collector. We don't see any merit in this submission as the Order-in-original dt. 23-11-1990 had been challenged by both the parties and as the grievances of both the parties arose from a common order-in-original, therefore, the disposal of two appeals arising out of one Order-in-original could mean disposal of two appeals and not three. The assessee is aggrieved with the Order-in-original in respect of denial of exemption of Notification No.107/88, dated 1-3-1988, on which they have come up in appeal before us.

The other matter pertains to confirmation of duty of Rs. 95,185.98.

Therefore, these were the two issues before the Id. Collector (Appeals) and the same is being agitated before us and, therefore, the question of filing one more appeal does not arise. The facts of these cases are that the assessee, is a SSI unit, engaged in the manufacture of different types of kitchen knives. Accordingly, they had filed classification list No. 23/89-90 classifying their product as "knives with cutting blades, serrated or not" under sub-heading 8211.00 and had claimed the benefit of exemption under Notification No. 107/88-C.E., dated 1-3-1988 as amended. They also started manufacturing knives-cum-scissor sharpner from November, 1989, and as such, they filed a supplementary classification list bearing IDO No. 114/89 classifying the said product under sub-heading 3926.90 claiming exemption under Notification No. 53/88, dated 1-3-1988 as amended as "article of plastic". Similarly, classification lists were filed for the product on 20th March, 1990 and 1-4-1990. Thereafter, show cause notices were issued to them asking them to explain as to why their product knife-cum-scissor sharpner should not be classified under sub-heading 8205 and also to explain as to why the benefit of the exemption under Notification No. 107/88-C.E., dated 1-3-1988 in respect of the product, knives with cutting blades should not be denied to them. The Assistant Collector vide his Order No. 145/CE/90, dated 23-11-1990 held that the product knife-cum-scissor sharpner is classifiable under Heading No. 8205. However, he granted the benefit of the exemption under Notification No. 107/88-C.E., dated 1-3-1988 as amended in respect of product knives with cutting blades serrated or not. As against the grant of the exemption, the Revenue appealed before the Collector (Appeals) who has accepted their prayer and has held that the benefit of the said notification cannot be extended to the said product. He has also confirmed the classification of knife-cum-scissor sharpner under Heading 82.05 and also confirmed the duty amount of Rs. 95,185.98 on the clearances made during the period from October, 1989 to March, 1990 as a result of wrong utilisation of Notification No.107/88-C.E., dated 1-3-1988. Therefore, the question for consideration before us are: (i) As to whether the benefit of Notification No. 107/88, dated 1-3-1988 as amended is available to the product knives with cutting blades serrated or not.

(ii) The correct classification of the product 'knife-cum-scissor sharpner'.

2. We have heard the Id. advocate shri Jitendra Singh for the appellants and Shri S.K. Sharma, Id. JDR for the Revenue. Referring to the Notificaton No. 107/88, dated 1-3-1988, the Id. advocate submitted that the preamble of the notification stated that the Central Government hereby exempted goods of the description specified under column (2) of the Table annexed to the Notification and falling under Chapter 82 of the Schedule to the Central Excise Tariff Act, 1985, from so much of the duty of excise leviable thereon which is specified in the said schedule, as in the excess of amount calculated at the rate specified in the corresponding entry in column 3 thereof. Pointing out to this preamble, Id. Advocate submitted that the sub-headings of the Chapter 82 had not been specified in the notification. Therefore, Serial No. 03 referred to "Spoons, forks, ladle, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware". And, therefore, the product knives with cutting blades is to fall within the description given in the said Serial No. "Knives with cutting blades, serrated or not (including pruning knives), other than knives of Heading No. 82.08, and blades therefore." the Id. Advocate submitted that the goods had been classified under this sub-heading, although, the goods should get the benefit under Serial No. 03 of the notification which had a different description in conformity with sub-heading 82.15. Id. Advocate submitted that the reasons as to why they should get the benefit is that the notification did not specify the sub-heading and, therefore, the notification had to be read strictly in a way that if the product could satisfy the description of Serial No. 03, then they should get the benefit, notwithstanding, the fact that there was a more appropriate heading under which the goods had been classified. He submitted that the show cause notice had also not given any reason for denying the notification. The reasons specified in the show cause notice was also not tenable. He submitted that the department was reading something in the notification, which was not there.

3. As regards the product knife-cum-scissor sharpner, Id. Advocate submitted that its classification has to be done under sub-heading 3926.90 in the residuary heading, which falls in the main Heading 39.26 reads, "other articles of plastic and articles of materials of Heading Nos. 3901 to 39.14". He also submitted that the

assessee had produced many certificates from the traders to show that this article is an article of plastic and not a hand tool under which the lower authorities have classified the goods. He submitted that the sub-heading 8205 covered only industrial hand tools and not kitchen - ware. Ld. Advocate also submitted that the classification had been approved earlier and that the subsequent re-opening for change of classification without any reason should be only prospective and demand should not be made with retrospective effect, in respect of the product, knives with cutting blades. He relied on the ruling rendered in the case of Indian Oxygen Ltd. v. Collector of Central Excise as reported in 1990 (47) E.L.T. 449 (Tribunal) which according to him was confirmed by the Hon'ble Supreme Court.

4. Ld. JDR, Shri S.K. Sharma submitted that the benefit of the notification had been rightly denied to the appellants in respect of knives with cutting blades, as they were classifiable under 82.11 which had not been challenged by the assessee. He pointed out that the description in Serial No. 03 of the notification did not refer to the description in sub-heading 82.11, but it reproduced the sub-heading 82.15. He, further, submitted that the knives with cutting blades cannot be considered as "similar kitchen or tableware" which description is shown in the Serial No. 03. He submitted that the benefit had been wrongly availed by them, and, therefore, by issue of show cause notice the same had been denied and as per the proviso of Section 11A, duty for six months can be confirmed, which is now a settled law.

5. As regards the product knife-cum-scissor, Id. JDR submitted that the classification adopted by the Revenue under Heading 8205 as a "hand tool" is more appropriate. According to page 1107 of the Explanatory Notes of HSN dealing with the Heading 82.05, the item was clearly covered therein. He submitted that the item cannot be considered as product of plastic and the classification has to be done according to the essential character of the goods.

6. We have carefully considered the submissions made by both the sides and have perused the rulings relied before us. We do not see any merits in these appeals. The description of sub-heading 82.15 has been extracted in Serial No. 03 of the notification in question. They are identically worded. The description given in

Serial No. 03 of notification clearly refers to the goods of description of Heading 82.15 only. Therefore, they have to be read accordingly, even though the preamble of the notification may not have mentioned the sub-heading. This has been the view expressed in one of our latest orders in the case of Western Refrigeration (P) Ltd. v. Collector of Customs, Bombay as per Final Order No. C/15/94-B2, dated 7-2-1994. In this case the Bench has relied on several rulings of the Tribunal as rendered in the case of: Eagle Flask Industries (P) Ltd. v. Collector of Central Excise, 1991 (53) E.L.T. 65. Norsk Data (India) Ltd. v. Collector of Customs, 1992 (57) E.L.T. 666. Khandelwal Metal & Engineering v. Union of India and Ors., 1983 (12) E.L.T. 292 confirmed by Hon'ble Supreme Court's judgment in the case of Khandelwal Metal & Engg. Works and Anr. etc. v. Union of India and Ors. as reported in 1985 (20) E.L.T. 222 at para 26.

We also observe that the appellants want to seek this article "as similar kitchen or tableware", as shown in the description of Serial No. 03 of the notification. We do not agree with the appellant's plea that this article is to be considered as "similar kitchen or tableware", in the light of the Revenue classifying the product in the more appropriate heading 'knives with cutting blades', in terms of Heading 82.11. The classification as a "knives with cutting blades" is in conformity with the reading of the HSN Explanatory Note appearing at page 1112 under Heading 82.11. The Explanation at page 1113 reads as follows : "This heading covers knives with cutting blades, serrated or not, with the exception of those included in Heading 82.08,, and of certain tools and tableware sometimes called "knives" but covered implicitly or explicitly by other headings of this Chapter (for example, hay knives of Heading 82.08, and other articles listed in the exclusions at the end of this Explanatory Note).

(1) Non-folding table knives of all kinds, including carving or dessert knives. Their handles and blades may be made of single piece of metal, or they may have a fitted handle of base metal, wood, horn, plashes, etc.

(2) Non-folding knives for kitchen, trade or other uses, generally of a less decorative appearance than the preceding type. This category includes, inter alia: Butchers' knives; knives of book-binders or papermakers; tanners', furriers',

saddlers', or cobblers' knives, with or without handles; bee-keepers', uncapping knives; gardeners' pruning knives, etc; hunting knives, sheath knives; oyster knives; fruit peeling knives.

(3) Folding knives of all kinds, with handles of base metal, wood, horn, plastic, etc. This group includes, inter alia: Pocket knives, pen knives, jack knives, camper's knives and sports knives (all these knives may have more than one blade, or be equipped with auxiliary corkscrews, spikes, screwdrivers, scissors, can openers, etc.); pocket folding knives for pruning, budding, grafting etc.

(4) Knives with several interchangeable blades, whether or not these are contained in the handles.

The heading also covers blades for the manufacture of the knives listed above which may be in the form of crude or machined blanks, polished or completely finished blades. Handles of base metal for the knives of this heading are also included.

In addition to the exclusions mentioned in the first paragraph above, the heading also excludes: As can be seen from the above note, a knife with cutting blades is classified under this heading. The fish-knives and butter knives are classified under Heading 82.15. Reading of HSN Explanatory Note on pages 1115 to 1116 clearly indicates that the fish-knives and butter-knives are of "non-cutting" type. The notes on similar tableware shown in Serial No. 7 at page 1116 refers to "poultry or meat grips and lobster or unit grips". The note given in pages 1115 and 1116 is reproduced herein below :-" (2) Table forks; carving forks, serving forks, cooks' forks; cake forks; oyster forks; snail forks.

(6) Sugar tongs of all kinds (cutting or not), cake tongs, hors-d'oeuvre tongs, asparagus tongs, snail tongs, meat tongs and ice tongs.

(7) Other tableware, such as poultry or meat grips, and lobster or unit grips.

These goods may be of one piece or fitted with handles of base metal, wood, plastics, etc.

In accordance with Chapter Note 3, the heading also includes sets consisting of one or more knives of Heading 82.11 and at least an equal number of articles of this heading.

The heading excludes lobster or poultry cutters of the secateur type (Heading 82.01)." As can be seen from the above Note, the knives with cutting blades cannot be considered in any of the headings given in Serial No. 03 of the notification. The knives might find a use in kitchen, but only those type of kitchen or tableware can be classified here, which are of similar nature or of the type given in the Serial No. 03 of the notification. The principle of Noscitur Asociis applies to the present case. Only those items of appropriate nature as given in the heading are to be classified together. Serial No. 03 refers to 'fish-knives and butter knives'. The HSN Explanatory Note refers to items which are blunt knives and not to cutting knives which fall under Heading 82.11, under which the product in question has been classified. Therefore, the Revenue has rightly denied the exemption and the reasons have also been clearly spelt out in the show cause notice and in the orders of the lower authorities. The confirmation of duty from six months is also inconformity with the Hon'ble Supreme Court's rulings rendered in the case of Elson Machines Pvt. Ltd. v. Collector of Central Excise as reported in 1988 (38) E.L.T. 571. The Rulings relied by the Id. Counsel do not apply to the facts of the present case.

7. As regards the classification of the item "knives-cum-scissor sharpner" the lower authorities has held this as a hand tool used for sharpening the edges of the blade of knife/scissor and such hand tools are specifically covered under Heading 82.05. The HSN Explanatory Note at page 1107 clearly includes knives sharpners. The said Explanatory Note under description E(1) includes 'steel and other knives sharpners of steel'. The Note E(1) is reproduced herein below: "E(1) A number of household articles, including some with cutting blades but not including mechanical types (see the Explanatory Note to Heading 82.10), having the character of tools and accordingly not proper to heading 73.23, such as : Flat irons (gas, paraffin (kerosene), charcoal, etc., types, but not electric irons which fall in Heading 85.16), curling irons; bottle openers, cork screws, simple can openers (including keys); nut-crackers, cherry stoners (spring types); button hooks; shoe

horns; "steels" and other knife sharpners of metal; pastry cutters and jagers; graters for cheese, etc;" lightning" mincers (with less cutting wheels); cheese slicers, vegetable slicers; waffling irons; cream or egg whisks, egg slicers; butter curlers; ice picks; vegetable mashers; larding needles; poker, tongs, rakers and cover lifts for stoves or fire places." 8. The chapter note of Chapter 82 clearly stipulates that goods with a blade, working edge, working surface or other working part of :- Therefore, keeping in view the chapter note (1) of Chapter 82, and the tariff description of Heading 82.05 of Central Excise Tariff Act, 1985, read along with Explanatory Note of HSN at page 1107, the design composition and function of product in question, there is no doubt that the knives cum scissor sharpner is not a plastic product. It is nothing but a hand tool appropriately classifiable under 82.05. The claim of the appellants that it has to be considered as a kitchenware or a tableware as covered by description given under Heading 82.15 of Central Excise Tariff Act, 1985 is not appropriate, for the reasons also stated by us in the above paragraphs and in terms of the principle Noscitur Asociis. The appellants claim that it should be classified as an article of plastic is also not a sound proposition, as the classification has to be done in terms of an essential function of the product, as has been laid down by the Hon'ble Supreme Court in the case of Atul Glass Industries Ltd. and Ors. v. Collector of Central Excise and Ors. as reported in 1986 (10) ECC 1 (SC). The observations made in para 8 of the order is reproduced herein below : "8. The test commonly applied to such cases is: How is the product identified by the class or section of people dealing with or using the product? That is a test which is attracted whenever the statute does not contain any definition. Porritts and Spencer (Asia) Ltd. v. State of Haryana (1978) 42 STC 433. It is generally by its functional character that a product is so identified. In Commissioner of Sales Tax, U.P. v. Macneill and Barry Ltd., Kanpur (1985) 2 SCALE 1093: (1986) 8 ECC. 147 (SC), this court expressed the view that ammonia paper and ferro paper, used for obtaining prints and sketches of site plans could not be described as paper, as that word was used in common parlance. On the same basis the Orissa High Court held in State of Orissa v. Gestetner Duplicators (P) Ltd. (1974) 33 STC 333 that stencil paper could not be classified as paper for the purpose of the Orissa Sales Tax Act. It is a matter of common experience that the identity of an article is associated with its primary

function. It is only logical that it should be so. When a consumer buys an article he buys it because it performs a specific function for him. There is a mental association in the mind of the consumer between the article and the need it supplies in his life. It is the functional character of the article which identifies it in his mind. In the case of a glass mirror, the consumer recalls primarily the reflective function of the article more than anything else. It is a mirror, an article which reflects images. It is referred to as a glass mirror only because the word glass is descriptive of the mirror in that glass has been used as a medium for manufacturing the mirror. The basic or fundamental character of the article lies in its being a mirror. It was observed by this court in *Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan and Ors.*, (1980) 3 SCR 1109 which was a case under the sales tax law : "In determining the meaning or connotation of words and expression describing an article or commodity the turnover of which is taxed in a sales tax enactment, if there is one principle fairly well settled it is that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted." *Geep Flashlight Industries Ltd. v. Union of India and Ors.* (1986) 8 ECC 53; 1985 (22) E.L.T. 3. Where the goods are not marketable that principle of construction is not attracted. *Indian Aluminium Cables Ltd. v. Union of India and Ors.*

(1985) 3 SCC 284 : (1985) 6 ECC 126 (SC), the question whether thermometers, lactometres, syringes, eye-wash glasses and measuring glasses could be described as "glassware" for the purpose of the Orissa Sales Tax Act, 1947 was answered by the Orissa High Court in the *State of Orissa v. Janta Medical Stores* (1976) 37 STC. 33 in the negative. To the same effect is, the decision of this court in *Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh* (1981) 3 SCR 294, where hypodermic clinical syringes were regarded as falling more accurately under the entry relating to "hospital equipment and apparatus" rather than under the entry which related to "glasswares" in the U.P. Sales Tax Act." The Id. Counsel relied on the certificates obtained from the traders to support his plea that the item is known as an "article of plastic". We are not in a position to appreciate this plea for the reason that the classification has to be done as per the

statutory definition and as per Section Note, and Chapter Note. If the Section Note, Chapter Note has clearly specified a product to fall therein, then this takes precedence over other factors. The statutory definition prevails over the Trade and Commercial understanding, as held by the Hon'ble Supreme Court in the case of Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co. as reported in 1988 (37) E.L.T. 480, and as held in the case of Indo International India v. Commissioner of Sales Tax, U.P.as reported in 1981 (8) E.L.T. 325 page 327 at para 4. Therefore, we are not in a position to appreciate the plea that knife-cum-scissor sharpner should be considered as article of plastic, on the basis of the certificates produced by them.

9. In the result there is no merits in these appeals and they are rejected.

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