National Insulated Cables Co. Vs. Coll. of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-01-1994

Reported in : (1994)(73)ELT889TriDel

Appellant : National Insulated Cables Co.

Respondent : Coll. of C. Excise

Judgement :

1.1 In three separate classification lists of different dates, the appellants herein declared among other goods the description of one type of goods as follows (as reproduced in the impugned order) and claimed classification of the said goods under Tariff Item 33B(ii) of the erstwhile Central Excise Tariff :- "1/1.8 mm (2.55 mm2) Nicco Round 2 core armoured cable conductor composed of Alum. Wires"," 1 /1.80 mm (2.55 mm2) Nicco single score power cable aluminium cond. circular / Sectors"etc.

1.2 The lower authorities, however, have classified the goods under Item 33B(i) as applicable to "electrical wires and cables of aluminium...the conductor of any core of which... has area not exceeding 2.5 square millimeters...." 1.3 Finding of fact by the lower appellate authority namely Shri G.Sarangi, Collector of Central Excise (Appeals) is as follows :- "In the instant case admittedly, the sectional area of the subject aluminium wire is more than 2.5 square milimetres i.e. 2.55 mm2 as declared by the appellants themselves in the relevant classification lists ...the appellants' subject excisable goods in question have a sectional area of "2.55 mm2" which is more than 2.5 square milimetres as provided for in Item 33B(i) of the CET".

1.4 Yet, despite the aforesaid finding of fact, the lower appellate authority has classified the goods under Tariff Item 33B(i) confirmed the order-in-original and rejected the appeal of the appellant herein.

Hence this appeal before the Tribunal.

2.1 Learned advocate, Shri N. Mookerjee has pointed out that the impugned order is a clear case of non-application of mind. He also relies on a judgment of Kerala High Court in the case of Aluminium Industries Ltd. v. U.O.I. and Ors., 1979 (4) E.L.T. (J 27) (Ker.).

Relevant extracts of paras 3 & 4 from a copy of the said judgment dated 16-9-1975 in O.P. No. 2060 of 1973, as reported in CENCUS and supplied to us during the course of hearing are reproduced below :- "3. The one and the only argument on behalf of the respondents is that 2.545 square millimetre must be reckoned as 2.5 square millimetre. This is by rounding off and leaving cut the second and the third decimal places. In support of this it is stated in the counter-affidavit that as the tariff definition, lays down the specification only up to the first decimal place, the area of the particular cable has necessarily to be calculated and corrected upto the first decimal place in accordance with accepted arithmetical norms of correction of decimal places, lest there be an arithmetical fallacy in the method of correction. It is further stated that there is nothing unjust or erroneous in this method.

4. There is no place for applying any arithmetical norms here. The question is one of application of a fiscal statute. The statute specifically lays down the rate of duty. It provides for 15 per cent duty in certain cases and in all other cases 5 per cent duty. The line of demarcation is also drawn. So long as 2.5 square millimetre is not exceeded the higher duty is leviable. But if the area of the sectional core of the cable exceeds 2.5 square millimetre the lesser duty is attracted. When the area is 2.545 square millimetre it is simple logic that it exceeds 2.5 square millimetre. No rounding off is called for. It is certainly plain that in such a case it is duty at 5 per cent that applies. The view taken by the authorities is perverse. The error is quite

apparent on the face of the records." 2.2 Learned SDR, Shri B.K. Singh, for the Revenue was also in an embarassing situation to defend the impugned order in view of the finding of fact reached by the lower appellate authority. The Bench could understand the indefensible position of the Revenue.

3.1 We are shockingly surprised at the final order of the lower appellate authority rejecting the appeal of the appellants herein despite its finding of fact that the wires and cables of aluminium in question are exceeding 2.5 square millimetres and yet classified them under 33B(i). In view of the Collector(Appeals) finding, the goods are classifiable vide Tariff Item 33B(ii). Accordingly, we allow the appeal with consequential relief to the appellants. We are also constrained to observe that it is not only non-application of mind by the lower authorities to the facts on record but goes further. It indicates a mental attitude that case/appeal of an assessee must be rejected, come what may. In our view this is a fit case which deserves to be brought to the notice of the Chairman, Central Board of Excise & Customs and the Secretary to the Department of Revenue for information and necessary action, if any.