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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-13-1994

Reported in : (1994)(72)ELT781TriDel

Appellant : Elgi Equipments Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This appeal arises out of order-in-original passed by the Collector of Central Excise, Coimbatore. The appellants have taken a licence for manufacturing and clearing mobile service units falling under T.I. 68.

It was found that the appellants were fabricating steel tables and steel cup-boards for fitting them in the mobile service units.

According to Department, steel tables and steel cup-boards falling under T.1.40 and the appellants have not taken the licence under Tariff Item 40. They have cleared 163 items at the rate of Rs. 3400/- amounting to total value of Rs. 5,54,200.00. A show cause notice was issued for the recovery of the duty at the appropriate rate on the clearance of the steel tables and steel cup-boards. A show-cause notice was duly answered contending that the steel tables and cup-boards bolted in Mobile Service Unit are part and parcel of chassiess and they are not liable to duty and referred to the Tariff Advice No. 1/73, F.No. 159/13/72 CX. 4, dt. 25-1-1973 issued by the Board to the effect that steel furniture designed for being bolted into Mobile Service Units was not classifiable under Tariff Item 40.

The Collector who adjudicated the proceedings held that the goods cleared by the appellants were dutiable. Accordingly, he confirmed the demand of duty amounting to Rs. 1,45,477.50 in addition to imposing penalty of Rs. 10,000 under Rules 9(2) and 173Q of Central Excise Rules, 1944.

2. Shri A.S. Sunder Rajan, ld. Consultant appearing for the appellants submitted that what the appellants have manufactured and cleared mobile service unit and what was the item fitted therein, cannot be considered to be a separate item falling under erstwhile Tariff Item 40. The tables and cup-boards were specially designed to be fitted into mobile service units and, therefore, could not be called as Iron and Steel furniture. Referring to the photographs of the goods in question and printed literature, he submitted that this is a catalogue which explains the composite form of specialised motor vehicle called mobile service unit and this technical literature was placed before the adjudicating authority but he failed to take note of the same. He submitted that the Tariff Advice No. 1/73 issued as per Board's Circular F. No. 159/13/72/CX. 4, dt. 25-1-1973 clearly clarifies that articles of steel furniture designed for bolting etc. are not liable to duty under Tariff Item 40 of Central Excise Tariff. He also referred to the order dt. 18-4-1985 passed by the Assistant Collector wherein it was observed that the appellants received duty paid motor vehicle chassis from their customers for the purpose of body building and mounting or fitting equipments such as compressors, Electric Motors and Grease Pumps etc. on the vehicle. The process of body building is not manufacture within the meaning of Section 2(f) of the Central Excise Act and Rules, 1944, hence no further duty is leviable on the body building activity. Further, it is observed that after mounting the specialised equipments such as compressor etc. on the body built vehicle, no new goods comes into existence but it remains motor vehicle only mounted or fitted with specialised equipments and further General Excise duty at appropriate rate is paid on these specialised equipments and accordingly held that mobile compressor unit is not a new item but is only a motor vehicle fitted or mounted with specialised equipments.

He also relied upon the following rulings in support of his contentions :Madras Radiators & Pressing Ltd. v. Collector of Central Excise -1989 (44) E.L.T. 247Tata Engineering & Locomotive Co. Ltd. v. Collector of Central Excise 3. Materials

Handling Engineering Co. Ltd. v. M.G. Wakins Superintendent of Central Excise and Ors. -1980 (6) E.L.T. 231 4. Jiwan Singh & Sons of Central Excise v. Sr. Superintendent of Central Excise, Jullundur and Anr. -1979 (4) E.L.T. (J 265)Elpro International Ltd. and Ors. v. Jt. Secretary, Govt. of India, Ministry of Finance and Ors.Atul Glass Industries Ltd. and Ors. v. Collector of Central Excise and Ors.

3. On the other hand Shri M.K. Jain, ld. SDR contended that the appellants are manufacturing steel tables and cup-boards falling under Tariff Item 40 but they have not taken licence for the same. Steel tables and cup-boards cannot be considered to be the part of the mobile unit since they are separate identifiable items as furniture.

Accordingly, the Deptt. was justified in classifying item under Tariff Item 40. The pamphlet said to be a catalogue shown by the appellants placed before the Tribunal for the first time was neither produced before the adjudicating authority not it contain the items in question.

In the classification list filed by the appellants, item was shown as mobile unit without giving the details. In the absence of any evidence to show that these were specially designed to be fitted into mobile service units which cannot be called as part of the mobile unit and this point was rightly dealt with the impugned order. He drew our attention to the impugned order wherein it was observed that mobile unit consists of several parts and one is an air compressor made by M/s. ELGI themselves which obviously had paid duty as an air compressor before being fitted into the service unit. There are other items such as drilling machines, bench grinders, electrical drillers etc. which obviously were duty paid. It was equally obvious that these were not specially made to be fitted into a mobile service unit. Some of the items are made by other people like Kirloskar, Advanis etc. What this shows is each and every component going into the mobile service unit was not specially designed to be a part thereof but in fact was general purpose equipment and was merely fitted into the service units. He submitted that the rulings referred to by the other side are not applicable to the case since the facts are distinguishable.

4. We have considered the matter. Important point to be considered in this case is whether items are classifiable under Tariff Item 40 as held by the department or to be classifiable under Tariff Item 68 as contended by the party. In other words whether the items in question were specially designed to be fitted into mobile service unit. The pamphlet or catalogue referred to by the appellants does not throw any light on this issue since it does not contain items in question as it was rightly pointed out by the departmental representative. The decision relied upon by the Counsel are also not applicable to this case since they were dealt with the situations either of different items or where they were specially designed to be fitted as part of the vehicle. Since we are not convinced with the evidence placed on record that these were specially designed to be fitted into mobile service unit, we do not find any infirmity in the impugned order holding that these items are classifiable under erstwhile Tariff Item 40 as iron and steel furniture. With this view, we, uphold the impugned order and accordingly, appeal filed by the party is hereby dismissed.

5. I agree with the Hon'ble Member 0) that the appellants have not shown that the items in question were specially designed for the mobile service unit.

6. Learned DR is correct in pointing out that the tables and cup-boards in question were ordinary articles of furniture. Since they were admittedly fabricated or manufactured by the appellants in their factory and then fitted in the unit the appellants were required to have declared these items separately and followed the prescribed procedure and paid the duty before using them or fitting in the mobile unit. In fact the appellant were liable for penalty for not having followed the prescribed procedure and not discharged the duty liability.

7. In so far as the classification is concerned, they have been rightly classified by the authorities below under Tariff Item 40 as articles in the nature of iron/steel, furniture and the duty demanded is payable.

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