

Collector of C. Excise Vs. Century Steel Balls (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-29-1994

Reported in : (1994)(73)ELT173TriDel

Appellant : Collector of C. Excise

Respondent : Century Steel Balls (P) Ltd.

Judgement :

1. The above appeals arise out of order dated 13-3-1986 of the Collector of Central Excise (Appeals) upholding the order of the Assistant Collector of Central Excise, Baroda extending the benefit of Notification No. 234/82, dated 1-11-1982 to Steel Balls manufactured by the respondents herein and cleared for use as Cycle parts. The respondents had filed the requisite declaration in terms of Notification No. 77/83, dated 1-3-1983 and on crossing the exemption limit of Rs. 30 lakhs stipulated therein, cleared the goods without obtaining the Central Excise licence and without following the Central Excise Procedure. The Superintendent of Central Excise issued Show Cause Notice dated 30-8-1984 proposing to recover duty of Rs. 3,09,499.40 for clearance during the period April, 1983 to March, 1984 and Show Cause Notice dated 11-4-1985 seeking to recover duty of Rs. 4,70,642.70 for clearance during the period April, 1984 to March, 1985.

The Assistant Collector vacated the Show Cause Notice on the ground that steel balls are parts of cycle eligible to exemption under Notification No. 234/82. He concluded that four sizes of steel balls manufactured by the respondents namely 1/4", 3/16", 5/32" and 1/8" are to be treated as cycle parts in view of their

composition and other properties of the material used to manufacture the same. He also held that the steel balls in question are known in the trade as cycle parts.

The lower Appellate Authority upheld the order of the Assistant Collector and extended the benefit of Notification No. 234/82 subject to the condition of production of end-use certificate from the customer and the dealers, to the satisfaction of the Assistant Collector. The Revenue filed the appeal bearing No. E/1459/86-B1 within the period of limitation. Subsequently the Department has filed a supplementary appeal No. E/1123/94-B1 alongwith an application for condonation of delay on the ground that only one appeal was filed against the common order of the Collector (Appeals) under the bonafide mistake that only one appeal was required to be filed. Following the practice of the Tribunal in such cases, we condone the file in preferring supplementary appeal.

2. We have heard Shri S.K. Sharma, Id. DR and Shri C.S. Lodha, Id. Advocate. We find that the issue is covered by the order of the Tribunal in the case of CCE, Jaipur and Ors. v. National Engg. India Ltd. reported in 1994 (72) E.L.T. 588 (Tri.) (Final Order No. E/272 to 293/94-B1 dated 23-5-1994). In that case the assessee who were manufacturer of Cycle grade steel balls contended that item fall for classification either under Chapter 87 Tariff Heading 87.14 or Chapter 73 Tariff Heading 73.26 as parts of cycles or other forged products while the Department contended that the steel balls are ... solid steel balls within the specifications contained in Note 6 to Chapter 84 CETA 1985 and therefore, all the steel balls fall under Tariff 84.82 as parts of ball bearings and consequently the benefit of Notification No.62/86, dated 10-2-1986 or 162/86, dated 1-3-1986 given to parts and assesories of cycles and cycle bearing shapes will not be available to the steel balls manufactured by the assessee. The steel balls were of the same size as those manufactured by the respondents in the present appeals. The Tribunal held as follows :- "8. We have carefully considered the pleas advanced from both sides on the question of meaning of Chapter Note 6 to Chapter 84. Heading 84.82, as already stated, applies to parts of ball bearings. Steel balls are parts of ball bearings. Therefore, when Chapter Note 6 to Chapter 84 refers to polished steel balls it must be referring to how the polished balls as parts of ball bearings are understood in trade industry and commercial circles which deal with the CETA,

1985. The word 'polished' has not been defined in the Chapter itself or anywhere else. We cannot merely go by the ordinary dictionary meanings including technical dictionaries. We have to give meaning to this word in the sense it is understood by the trade, industry and commercial circles. There is no doubt on the basis of affidavits that polished steel balls in the context of parts of ball bearings would apply to polishing made by lapping machine which is not undertaken in respect of the steel balls cycle grade.

8.1 As regards the tolerances of maximum and minimum diameters from the nominal diameters provided in Chapter No. 6, we are of the view that there is a certain amount of ambiguity in the said Chapter Note. Both the readings, as contended by the assesseees on the one hand and the Revenue on the other are possible.

8.2 It is well settled principle of law that where there is an ambiguity in a provision of law, the benefit thereof should be given to the subject. Keeping in view the aforesaid principle the assesseees are entitled to the benefit. Therefore, it has to be held that the steel balls under consideration do not satisfy the two criterion (1) of being polished and (ii) of measurements of maximum and minimum diameters. For this reason as well as the steel balls cycle grade would not fall under Tariff Heading 84.82 and they would be classifiable under Heading 73.26 (w.e.f. 1-3-1988) and under Tariff Heading 73.08 (prior to 1-3-1988). Consequently, the steel balls would be entitled to the benefit of Notification 62/86 or 162/86." The judgment of the Tribunal (supra) applies squarely to the facts of this case in which the steel balls are of the same size as those manufactured by the assesseees in the National Engineering case and the Notification No. 234/82 is worded in similar terms to Notification 62/86 and 162/86. Accordingly, following the ratio thereof, we held that the steel balls manufactured by the respondents herein are entitled to benefit of exemption under Notification No. 234/82. In the result we uphold the impugned order and dismiss the appeals of the Revenue and grant consequential relief to the respondents.