

Railtech Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-1994

Reported in : (1996)(85)ELT267TriDel

Appellant : Railtech

Respondent : Collector of Central Excise

Judgement :

1. Arguing on the application for waiver of pre-deposit and stay of recovery of the duty demand of Rs. 22,59,879.16 confirmed by the adjudicating authority for the period 1-8-1993 to 1-1-1994 on aluminium windows, doors and frames thereof which are solely designed for use in railway coaches on the ground that the items merit classification as parts of railway under sub-heading 8607.00 of the Schedule to the CETA, 1985, the learned Counsel Smt. Archana Wadhwa submits that the items fall under sub-heading 7610.10 which specifically covers aluminium "doors, windows and their frames and thresholds for doors". She contends that as per Rule 3 (a) of the Rules for the interpretation of the Schedule to the Tariff, the heading which provides the more specific description is to be preferred to the heading providing a more general description. Her next contention is that, even if the classification as held by the Department is accepted, still the demand even for the period of 6 months prior to the issue of the show cause notice is not maintainable in view of the fact that, right from 1991 when the applicants started manufacture of the disputed goods till Dec.

1993. the Deptt. had all along accepted the applicants' claim for classification under sub-heading 7610.10 with the benefit of complete exemption from duty vide serial No. 17 of the Table annexed to Notification 180/88, dated 13-5-1988 and a subsequent change of opinion by the Department can only result in a demand becoming operative with prospective effect and not retrospectively. In this connection she refers to the applicants' letter dated 16-9-1991 and the replies of the Deptt. dated 8-10-1991, 10-10-1991 and 27-12-1993 and the CBEC circular dated 1-9-1993 clarifying that the steel and aluminium water tanks fitted on railway passenger coaches would be classifiable under Chapter 73 and Chapter 76 respectively of the CETA, 1985. In support of her contention that in cases where the long-standing practice has changed subsequently, even the normal period of limitation will not be available to the Department, she cites the decision of the Hon'ble Supreme Court in the case of Rainbow Industries reported in 1994 (4) RLT 524. Lastly, she submits that, in any event, the applicants would be entitled to the benefit of modvat credit of Rs. 18,90,968.86 being the duty paid on inputs such as aluminium sheets, extruded profiles, etc., used in the manufacture of the disputed items during the relevant period and the duty would be neutralised to this extent.

2. In reply to the above submissions, the learned SDR, Shri K.K. Jha argued that the classification of the goods was evidently under sub-heading 8607.00 as "parts of railway" and not under 7610.10 which applied only to those doors and windows of aluminium which are parts of structures and not to those used in railway passenger carriage coaches, wherein the items manufactured by the applicants were admittedly exclusively used. He relies on Rule 1 of the Interpretative Rules and to Note 3 of Section XVII of the Schedule (under which Chapter 86 is covered) which excludes certain parts and accessories from the scope of that Section and submits that the impugned goods not being specifically excluded therefrom, are to be included in Chapter 86. Regarding the prospective nature of the demand, the learned SDR contends that it is well settled law that there is no bar against the revision of the classification list and the demand for six months backwards from the notice, is valid. [See 1988 (34) E.L.T. 8 (SC) - Nat Steel Equipment v.CCE, 1988 (35) E.L.T. 605 (SC) TISCO v. Union of India and 1992 (58) E.L.T. 361 (Kar) -Gurupriya Tele Auto v Superintendent of Central Excise]. Finally, he pleads that,

in the absence of fulfilment of procedural requirement of the modvat scheme such as filing of declaration under Rule 57G Central Excise Rules, modvat credit cannot be extended to the applicants. He therefore, prays for rejection of the stay application.

3. We have carefully considered the rival contentions. The matter is contentions, and the merits will have to be considered in the light of the Interpretative Rules and the Notes to the relevant Chapters and Section XVII; hence it would be more appropriate to undertake the exercise of determination of correct classification of the disputed items at the stage of final hearing of the appeal. Regarding the demand being operative only prospectively, since there are judgments of the Hon'ble Supreme Court which have held that in cases of change of classification, the demand can date back 6 months, this issue is also arguable. However, the claim to modvat requires consideration in view of the orders of the Tribunal in the cases of Chamundi Steels - 1994 (3) RLT 855 and Vivek Re-Rolling - 1994 (4) RLT 265. We, therefore, direct verification of this claim by the jurisdictional Excise officer, with reference to details to be supplied by the applicants. Due verification is to be carried out within a period of 4 weeks from the date of receipt of this order. Thereafter, the applicants shall deposit 50% of the duty demand remaining due in terms of the adjudication order after modvat adjustment, within a further period of 8 weeks therefrom.

Subject to such deposit, the requirement of predeposit of balance duty shall stand dispensed with and its recovery stayed, during the pendency of the appeal. To come up for ascertaining compliance on 4-4-1995.

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