Vishal Malleable Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-17-1995

Reported in : (1995)(76)ELT590TriDel

Appellant : Vishal Malleable Limited

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order dated 30-4-1985 passed by the Collector of Central Excise, Baroda. The appellants are engaged in the manufacture of "Malleable iron castings" falling under Tariff Item 25(16) of the Central Excise Tariff. They were issued a Central Excise Licence in form L-4 and in respect of their products they were availing exemption from payment of duty under Notification No. 74/62 dated 24-4-1962 as amended by Notification No. 119/64, dated 27-6-1964 and Notification No. 208/83 dated 1-3-1983. The appellants were also manufacturing "Pipe fittings" falling under Item 68 of the Central Excise Tariff which were being cleared on payment of duty under Tariff Item 68. The appellants were clearing certain articles bearing specific names such as T.C. Caps, Top-mast, Socket tongue, and Bearing Shells under Tariff Item 25 along with other goods as "iron castings" without payment of duty. The Castings of T.C. Caps, Top-mast, Socket tongue, and Bearing Shells were sent to other factories namely, (i) M/s. Mac Engineering, (ii) Abhay Engineering Industries, (iii) Arcost Industries, and (iv) Santani Auto Ancilliaries for the purpose of drilling of holes and machining on job-work basis through M/s. Shah Metal Industries to whom other items of castings

were also sent by the appellants for fettling and shot blasting to job-work basis. The goods sent by the appellants on job workers against their private gate passes were received back in their factory and were finally cleared therefrom without payment of duty. The Central Excise (Preventive) officers, after visiting the appellants' factory on 17-10-1983 arrived at the conclusion that identifiable parts bearing specific names namely, T.C.Caps, Top-mast, Socket Tongue and Bearing Shells were classifiable under Tariff Item 68 since crude castings of such articles after being subjected to machining and drilling operations were converted into different identifiable articles having distinct name, characteristics and use. During the course of their investigations the officers visited the various units which were carrying out the processing of the crude castings on job work basis and seized different quantities of finished and unfinished goods and also recorded the statements of some of the concerned persons. As a result of the investigations carried out by them, it appeared to the officers that the appellants had by resorting to fraud, wilful mis-statement and suppression of facts, cleared namely T.C. Caps, Top-mast, Socket Tongue, and Bearing Shells without payment of duty leviable thereon by treating them as "Malleable Castings" classifiable under Tariff Item 25(16) read with Notification No. 74/62, dated 24-4-1962 as amended by Notification No. 208/83, dated 1-8-1983 instead of classifying them as finished identifiable parts/products under Tariff Item 68. On this basis the appellants were served with a show cause notice dated 16-4-1984 charging them with contravention of the provisions of various Central Excise Rules and calling upon them to show cause as to why duty on goods of the aforesaid description valued at Rs. 12,32,375.20 cleared by them during the period December, 1982 to 19-10-1983 should not be recovered in terms of the proviso to Sub-section (1) of Section 11A of the Central Excises and Salt Act, 1944, and why penalty should not be imposed on them. The appellants were also asked to show cause as to why the goods seized from the premises of the job-workers should not be confiscated.

2. The appellants denied all the charges in the show cause notice and contended that the products in question namely, T.C. Caps, Top-mast, Bearing Shells and Socket Tongue were iron castings falling under Tariff Item 25(16) and none of them could be deemed to have been converted into identifiable parts falling under Tariff Item 68 as a result of the job-work carried out on them. However, by the

impugned order the Collector rejected the appellant's contentions and arrived at the finding that by the process of drilling the castings in question were converted into identifiable parts having names, characteristics and uses different from the original products and as such the process of drilling amounted "manufacture" in terms of Section 2(f) of the Act.

He, therefore, held that the resultant products were classifiable under Tariff Item 68 and confirmed the demand of duty amounting to Rs. 1,18,229-09 in terms of the proviso to Section 11A of the Act. He also imposed a penalty of Rs. 18,000/- on the appellants. The goods seized from the premises of different job-workers were also ordered to be confiscated but option was given in each case for the redemption of the goods on payment of specified amount as fine.

3. Appearing on behalf of the appellants Shri Willingdon Christian, Ld.

Advocate submitted that during the relevant period in the appellants' factory certain dies and moulds had developed defects giving rise to holes and other defects in castings. He added that such castings were therefore, being sent by the appellants to job-workers for rectification of defects. He contended that the goods recieved back from the job-workers after removal of defects by blasting and drilling of holes were not new finished machine parts but continued to be crude-castings classifiable under Tariff Item 26A(ii). He argued that the castings in question being covered by the specific Tariff Item 25, they could not be classified under the residuary Item 68 of the Central Excise Tariff. In support of his contention he cited the following case law :- (i) 1986 (26) E.L.T. 471 (Cal.) Gontermen Peipers (I) Ltd. v. Addl.

Secy, to the Government of India.Tata Vodogawa Ltd. v. Asstt. Collector of Central Excise.Tata Iron & Steel Co. Ltd. v. Collector of Customs.Tata Iron & Steel Co. Ltd. v. Union of India.

(vi) 1980 (6) E.L.T. 249 (Bom.) - Garware Nylons Ltd. v. Union of India.

(vii) 1983 (13) E.L.T. 1566 (S.C.) - Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India.

Continuing his submissions the Ld. counsel for the appellants submitted that there was no finding that the concerned job workers were dummy units. He contended that the job work was undertaken by independent units and even if it is assumed that after processing of the disputed castings by the job workers new products having distinctive name, characteristics and usage classifiable under Tariff Item 68 had emerged, duty could be recovered only from job-workers, who were the actual manufacturers of the goods in question. He added that even if it is held that the goods emerging after the operations by the job-workers were classifiable under Tariff Item 68, no duty would be recoverable as the concerned units were eligible for exemption under Notification No.46/81, dated 1-3-1981 as amended by Notification No. 77/83, dated 1-3-1983 and Notification No. 105/80, dated 1-6-1980. In support of his submission he placed reliance on the following case law :- (Tri.) Kerala State Electricity Board v. CCE, Cochin.Mahavir Metal Industries, Bombay v. CCE, Bombay.

(iv) 1992 (57) E.L.T. 290 (Tribunal) - S.O.L. Pharmaceuticals Ltd. v. CCE.The Ld. counsel for the appellants contended that the demand of duty for the period December, 1982 to October, 1983 has to be deemed as time barred. He stated that the Collector had invoked the extended period under the proviso to Section 11A on the grounds of wilful suppression and mis-statement of facts with the intent to evade duty on the basis of his finding that the appellants had not informed the department that the goods were being removed from their factory for further processing by job-workers. He contended that the extended period for confirmation of the demand was not invokable since the appellants had cleared the goods on the basis of an approved classification list and as contended by their written reply to the show cause notice, they were under the bonafide belief that drilling of holes in unfinished castings did not amount to manufacture of a new excisable product. In support of his contention he cited the following case law :- (S.C.) Padmini Products v. Collector of Central Excise,Punjab Recorders Ltd. v. Collector of Central Excise,(Tri.) New Polymer Industries v. Collector of Central Excise.

4. On behalf of the respondents Shri K.K. Jha, Ld. SDR stated that the appellants' contention that in case drilling of holes in castings was held as amounting to

manufacture then the job-workers who had processed the castings by machining and drilling the holes would have to be deemed as manufacturers and duty, if held to be leviable, would be recoverable only from the job-workers, has no force at all. He submitted that the semi-finished goods in the form of castings were sent by the appellants to the job workers for finishing against their own gate passes and as observed by the Collector the finished goods having different name, characteristics, and use after being received back were finally cleared from the appellants' factory. He argued that under these circumstances there was no infirmity in the Collector's finding that the goods were classifiable under Tariff Item 68 and duty due on them was recoverable from the appellants. He added that the Collector's order invoking the extended period of limitation on the grounds of wilful suppression and mis-statement of facts with the intent to evade duty is also sustainable since the appellants had not correctly described the goods which they were actually clearing in the classification list and they had also not disclosed that they were sending the unfinished castings to job-workers for drilling of holes and other operations for conversion into distinct and identifiable articles having different name, characteristics and use.

5. We have examined the records of the case and considered the submissions on behalf of both sides. It is seen that the main points that arise for consideration in this case are whether :- (i) "Malleable iron castings" of items known as T.C. Caps, Top-mast, Socket Tongue and Bearing Shells when subjected to shot blasting drilling and machining process result in distinct finished articles classifiable under Tariff Item 68.

(ii) In the event of the disputed products being held as dutiable under Tariff Item 68, the duty, if any, would be recoverable only from the job-workers and not the appellants.

(iii) The demand confirmed by the impugned order by invoking the extended period of limitation under the proviso to Section 11A of the Act, is sustainable.

6. The appellants have contended that rough Malleable iron casting known as T.C. Caps, Top-mast, Socket Tongue, and Bearings Shells were being sent against their private gate-passes for finishing operations such namely, shot blasting/fettling

on job work basis to M/s. Shah Metal Inds. and after completion of these operations by M/s. Shah Metal Industries the goods were subjected to further finishing by machining and drilling of holes at the premises of other job-workers namely, M/s.

Mac Engineering or M/s. Arcoshi Industries. The appellants have contended that rough castings of the items known as T.C. Caps, Top-mast, Socket Tongue and Bearing Shells received back in their factory after being subjected to finishing operations such a shot blasting/fettling, machining and drilling of holes, continued to be "Castings" classifiable under Tariff Item 25(16) goods falling under residuary Item 68 of the Tariff.

7. The respondents' case is that the disputed products namely, T.C.Caps, Top-mast, Socket Tongue and Bearing Shells produced by subjecting rough castings to various finishing operations such as shot blasting, machining and drilling of holes were finished machined parts which being distinct in character, name, usage from the original castings from which they were made were correctly classifiable under Tariff Item 68. In this regard reliance has been placed on the following findings of the Collector in the impugned order :- "In this regard, in his recorded statement dated 9-12-1983 and 10-12-1983, Shri Kanaiyalal Gulabdas Shah, Secretary and Factory Manager in the Unit, has clearly stated that they were getting process of drilling and machining done on their certain products namely (i) T.C. Caps, (ii) Top-mast, (iii) Socket Tongue and (iv) Bearing shells, on job-work basis from other factory namely (i) Mac Engineering, (ii) Arkosi Industries, (iii) Santani Auto Ancilliary and (iv) Abhay Engineering Industries, all of Ankleshwar Further, in para 6 of their reply dated 6-6-1984, it has been also clarified that the products T.C. Caps, Top-mast and Socket Tongue were sent to outside parties in Ankleshwar for making holes, without which the same had no utility, whatsoever. The other product namely, "Bearing Shell" was sent for only Lathe machining so as to make it fit for the end-use as required by the customers.

Further, in para 5 of their reply dated 6-6-1984, the Unit has narrated the end-use of each of the four products in question which reads as under :- (i) T.C. Caps :- These are the cast products which are supplied by us to manufacturers of

insulators. These manufacturers use the same as metallic parts for the Insulators manufactured and supplied by them to the Electricity Boards of the various States.

(ii) Top-mast:- These are the cast products which are supplied to the Railway Contractors who fit them on poles as required by the Railway. In other words, these cast products are used by Railway for fitting (iii) Socket Tongue :- These cast products, as are supplied by us, are used for over-head wiring by the different Electricity Boards.

(iv) Bearing Shells :- These cast products are supplied to Railways which use them for fitting on the shaft of the whells.

From the above ascertained position, it clearly transpires that the process of drilling and machining were absolutely necessary on the four products in question, without which the same had no utility as admitted by the Unit itself.

In this context, it would be relevant to refer to the statutory definition of "manufacture" given in Section 2(f) of the Central Excises and Salt Act, 1944, which reads as under : "manufacture includes any process incidental or ancillary to the completion of a manufactured product." In the instant case, by process of drilling and machining "Crude Iron Castings" have been converted into distinctly identifiable articles (products) having different names, characteristic and end-uses from the original products. Thus the process of drilling/machining which were absolutely necessary as admitted by the Unit for completion of a manufactured product and are thus rightly covered by the inclusive definition of "manufacture" given in Section 2(f) as above.Brakes India Ltd. v. Superintendent of C. Excise - 1986 (26) E.L.T. 211 (Mad.), Madras High Court has observed as under :- "The process of drilling and trimming or chamferring is a process which has to be essentially applied in order to render the break lining blanks fit to be straightway used in vehicles. Consequently, the process of drilling and trimming or chamferring of break lining blanks is a process essential, incidental or ancilliary to the completion of the brake linings as manufactured product as without drilling or trimming or chamferring, the product could not be used in vehicles. I, therefore, hold that the process of drilling, Trimming or chamferring which is applied to the break lining blanks purchased by the Petitioners to their specification from M/s.

Rana Brake Lining Ltd. and other manufacturers of brake linings is incidental or ancillary to manufacture and that therefore the Petitioners must be deemed to be manufacturing break linings." 8. On a plain reading of the Collector's findings extracted above it follows that the disputed Crude Malleable Steel castings after being subjected to various processes such as short blasting, machining and drilling of holes at the premises of different job workers assumed the form of finished parts. We are inclined to agree with the Collector's finding that the end use of the disputed products as indicated by the appellants in para 5 of their reply dated 6-6-1984 to the show cause notice is clearly indicative of the fact that the malleable castings in question on being received back by the appellants from the job workers had assumed the form of finished components distinct from original malleable castings. The Id. counsel for the appellants has contended that the malleable steel castings in question even after being subjected to the process of machining, continued to be steel castings classifiable under the specific Tariff entry 25(16) and could not be deemed as classifiable under the residuary Item 68 of the Tariff. In support of their contention he placed reliance on the following case law :- (i) Gontermen Peipers (I) Ltd. v. Addl. Secty. to the Govt. of India - 1986 (26) E.L.T. 47 (Cal.)Tata Yodogawa Ltd. v. Asstt. Collector of Central Excise - 1983 (12) E.L.T. 17Tata Iron & Steel Co. Ltd. v. Collector of Customs -1983 (13) E.L.T. 1113 (Pat.)Tata Iron & Steel Co. Ltd. v. Union of India - 1988 (35) E.L.T. 605 (S.C.) (vi) Garware Nylons Ltd. v. Union of India - 1980 (6) E.L.T. 249 (Bom.)Dunlop India Ltd. & Madras Rubber Factory v. Union of India - 1983 (13) E.L.T. 1566 (S.C.) We find that in the cases of M/s. Gonterman Peipers (I) Ltd., and M/s.

Tata Yodogawa Ltd. the disputed products were cast iron rolls which after emerging from mould as rough castings were subjected to the process of machining. The machined cast iron rolls were held as not finished machined parts since after being received by the customers, they were to be subjected to final finishing. Similarly in the case of Tata & Steel Co. Ltd. the Supreme Court had held that forged products supplied to the customers in rough machined condition were classifiable under Item 26AA (ia) of the Central Excise Tariff as forged products and under Item 68 on completion of the manufacture of finished goods at the appellants premises. It is seen that in the case of Malleable Iron and Steel

Castings (P) Ltd. v. Collector of Central Excise, Bombay reported in 1987 (30) E.L.T. 1019 in which the case law cited before us was also relied upon by the concerned appellant, the Tribunal held that the liability under Tariff Item 68 would arise if castings were converted into identifiable machine parts different from the castings.

Para 16 of the said order of the Tribunal being relevant is reproduced below :- It is seen that on the basis of the appellants' statement as regards the end use of the products in question and having regard to the various processes namely, shot blasting, machining and drilling of holes, to which malleable castings of the item were subjected to at the premises of different job workers, the Collector has recorded that the disputed T.C. Caps were being supplied to the manufacturers of insulators for use as metallic parts of insulators supplied by them to the Electricity Boards of various States. Similarly, as observed by the Collector, Top-masts were casting products and were being supplied to Railway contractors for being fitted on poles as per the requirement of the Railways and Socket Tongues were also cast products which were meant for use in connection with over-head wiring by different Electricity Boards. Likewise the item Bearing Shell was also a cast product used by the Railways for fitting on the shaft of the wheels. It is not the appellants' case that their customers were carrying out any further finishing operations on these items before putting them to use as a component. Under these circumstances we are inclined to agree with the Collector's finding that after machining and drilling processes the "Crude Cast Iron Castings" of the disputed items were converted into identifiable products having different names, characteristics and uses, classifiable under T. I. 68 9. In view of the finding that the disputed products were classifiable under T.I 68, the next point that arises for consideration is whether the liability for duty can be fastened on the appellants. The appellants' case is that in case as a result of the operations of machining and drilling carried out by the job-workers the crude castings are held as having attained the character of articles having different names, characteristics and uses, the liability for payment of duty on the resultant products would be of the concerned job workers who would have to be treated as the independent manufacturers. In this regard we find from the records of the case that 'Crude Castings' of the disputed products produced in the appellants factory were not

being finally cleared. Such castings were sent by the appellants against their private gate-passes to M/s. Shah Metal Industries, Ankleshwar for carrying out short-blasting and fettling operations on job-work basis.

For further finishing of the goods through processes such as machining and drilling of holes, the goods were sent by M/s. Shah Metal Industries to the premises of other job-workers namely, M/s. Mac Engineering, M/s. Arcosi Industries, M/s. Santani Auto Ancilliaries and M/s. Abhay Industries. The finished goods were received back in the appellants' factory. As confirmed by Shri Kannaiyalal Gulabdas, Secretary and Factory Manager of the appellants' Company in his statement dt. 10-12-1983 on receiving the finished machined goods from the job workers, the appellants were entering them after inspection in the Central Excise Register RG-1 before despatching them to the customers against Central Excise gate passes. In cases where the customers wanted the goods in galvanised condition they were also subjected them to galvanisation before being despatched. It is evident that the appellants were availing the facility in terms of Rule 56B reproduced below for sending semi-finished goods to other parties for carrying out further manufacturing process even when they had not obtained the required permission from the Collector :- "RULE 56B. Special procedure for removal of finished excisable goods or semi-finished goods for certain purposes. - The Collector may, by special order and subject to such conditions as may be specified by the Collector, permit a manufacturer to remove - (i) excisable goods which are in the nature of semi-finished goods, for carrying out certain manufacturing processes, or (b) excisable goods for carrying out tests, to some other premises of his or to the premises of another person and to bring back such goods to his factory, without payment of duty, or to some other licensed premises of his or to the premises of another assessee and allow these goods to be removed on payment of duty or without payment of duty for export from such other licensed premises of his or from the premises of such assessee to whom the goods have been sent:n Provided that this rule shall not apply to the goods known as "prototypes which are sent out for trial or development test." The appellants were merely sending the unfinished castings of the disputed products against their own gate-passes for carrying out further manufacturing processes and on receiving back the goods from the job-workers they were being entered in the Central

Excise Register RG-1. In cases where the customers wanted the finished goods to be supplied in galvanised form the appellants were also subjecting them to galvanising. The finished goods, figuring in the Central Excise records were finally supplied to the customers against Central Excise gate-passes. Having regard to these facts we hold that appellants were liable to pay the duty on the finished parts in question, falling under Tariff Item 68 which were entered in the Central Excise records and finally cleared from their factory against Central Excise gate-passes.

10. The last point to be examined is whether the demand confirmed by the impugned order by invoking the extended period of limitation under the proviso to Section 11A of the Act, is sustainable. The appellants have contended that the Collector's finding in regard to suppression of facts with the intent to evade duty is not sustainable since the goods were cleared by the appellants against approved classification list they had acted under the bona fide belief that the goods in question were unmachined castings classifiable under Item 25(16). In support of their contention they have placed reliance on the following case law :-Punjab Recorders Ltd. v. Collector of Cm. Excise - 1992 (57) E.L.T. 293New Polymer Industries v. Collector of Central Excise - 1991 (52) E.L.T. 145 (Tri.) For the proper appreciation of facts in this regard we refer to the relevant findings of the Collector which are reproduced below :- "In this regard, on going through the impugned show cause notice dt.

16-4-1984 issued to the Unit, I find that the grounds for invocation of charges of suppression and misstatement of facts have been discussed at length in the different paras of the show cause notice.

As such the Unit's argument that the department has only reproduced the proviso to Section 11A is baseless and is not correct.

Further, with regard to their argument on the point of limitation, it may be stated that wilful and deliberate intent on their part to evade payment of duty is clearly established from the fact that they did not disclose full description and information with regard to four products in question before the Central Excise Officers and also suppressed the fact regarding certain processes to be carried out on the four products in question namely, T.C. Caps, Top-mast, Socket Tongue and Bearing

Sheik and other products as well. In view of this, the duty as demanded in the impugned show cause notice dt.

16-4-1984, would be rightly governed by the longer period of 5 years under proviso to Sub-section (1) of Section 11A of the Central Excises & Salt Act, 1944, and not by the period of six months as contended by the unit. In view of above, the reliance placed by them on Board's circular No. 24/83 dt. 24-11-1983 and Circular No. 34/84 dt. 28-9-1984 is of no avail to them." As observed by the Collector the appellants had not disclosed in the relevant classification list the correct description of the products in question. The disputed goods were finished machined parts known as T.C.Caps, Top-mast, Socket Tongue and Bearing Shells but they were declared as "Malleable Castings" classifiable under T. I. 25. It is evident that the appellants also failed to disclose that they were sending rough castings of the disputed products under their private gate passes to different job workers for finishing and conversion into identifiable parts by subjecting them to machining and other processes such as shot blasting and drilling of holes. Even though these parts were being received back after machining and they were being cleared against Central Excise gate passes either without any further processing or after galvanising the appellants failed to obtain the permission from the Collector for despatching the semi-finished castings to the premises of the job-workers for finishing and also did not comply with the other requirements of Rule 56B. Under these circumstances we are inclined to agree with the finding of the Collector that the appellants had wilfully suppressed material facts and other relevant information in respect of the disputed goods with the intention to evade duty. We, therefore, hold that the Collector's order invoking the extended period of limitation under the proviso to Section 11A of the Act is sustainable.

11. In view of the above discussion, we find that the Collector's order confiscating the seized goods and imposing penalty on the appellants is also sustainable.