Collector of Central Excise Vs. Eswarana and Sons Engg. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-17-1995

Reported in : (1995)LC19Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Eswarana and Sons Engg. Ltd.

Judgement :

1. This appeal is directed against the impugned Order-in-Appeal passed by the Collector of Central Excise (Appeals), Madras.

2. Brief facts leading to the present appeal are that, the respondents M/s. Eswarana & Sons Engg. Ltd., Madras, are engaged in the manufacture of Control Panels Switch Gears, Air-circuit Brakers and Oil Circuit Brakers and had been paying duty under erstwhile Tariff Item 68.

However, a study of the manufacturing process revealed that the respondents inter alia manufacture Hexagonal Head Brass Connection Nuts and Box Spanner Handles. According to the Revenue, the Hexagonal Head Brass Connection Nuts which is used in the assembly of Oil Circuit Braker has the fastening function and hence is to be classified under Tariff Item 52 of Central Excise Tariff and the Box Spanner Handles which is used in the Air Circuit Brakers under Tariff Item 51-A(i) as the Box Spanner Handles is nothing but Hand Tool. On this study of the manufacturing process, the Department formed a tentative view that the respondents wrongly classified the said items under Tariff Item 68 and availed of concession under Notification No. 118/75. As a sequel thereof, a Show Cause Notice as to why the said two items, namely, Brass Connection Nut and Box Spanner Handles used in the manufacture of Oil Circuit Brakers and Air Circuit Brakers respectively, be not classified under Tariff Item 52 and Tariff Item 51-A of Central Excise Tariff respectively and why differential duty be not demanded, was issued. The respondents contested the Show Cause Notice. However, the Assistant Collector of Central Excise after usual adjudication proceedings held that Brass Hexagonal Connection Nut and the Box Spanner Handles are correctly classifiable under Tariff Item 52 and Tariff Item 51-A respectively, and accordingly confirmed the demand raised in the Show Cause Notice. On appeal by the respondents, the Collector of Central Excise (Appeals), confirmed the classification of the Box Spanner Handle under Tariff Item 51-A. However, he agreeing with the contention of the respondents raised before him held that the Brass Connection Nut cannot be classified as Nut under Tariff Item 52 and proper classification should be under Tariff Item 68. Thus, he set aside that part of the order of the Assistant Collector which held that the Brass Connection Nut manufactured by the respondents are to be classified under Tariff Item 52.

3. Aggrieved with that findings of the Collector (Appeals) that Brass Connection Nut are classified under Tariff Item 68 and not under Tariff Item 52, the Revenue has filed the present appeal. The respondents have also filed their Cross Objections challenging that part of the Order of the Collector (Appeals) which held that Box Spanner Handles are classified tinder Tariff Item 51-A of Central Excise Tariff.

4. Arguing on behalf of the appellant, Collector of Central Excise, Madras, Shri M.K. Jain, learned SDR, submitted that in the present case the Brass Connection Nut is admittedly made of Brass, is threaded, has the fastening function and in relation to the manufacture of which power is used. Thus, the Brass Connection Nut squarely fits it in the description of Tariff Item 52 which reads, as follows : "Bolts, and Nuts threaded or tapped and screws of base metal or alloys thereof in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power". Therefore, it was correctly classified under Tariff Item 52 by the Assistant Collector. To support his contention, he cited the case of Sri Ramdas

Motor Transport Ltd. v.Collector of Central Excise, Madras,Fit Tight Nuts & Bolts Ltd. v. Collector of Central Excise, Rajkot, 1985 (21) E.L.T. 717, and the judgment rendered by this Tribunal in another case of the respondents themselves (Final Order No. 261/1985-D, dated 2nd August, 1985).

5. Repelling the contention raised by the learned SDR, authorised representative of the respondents' company, Shri C, Manickavasagam, submitted that Brass Connector Nut of the Oil Curcuit Braker has two functions, namely, (1) current carrying; and (2) incidental fastening.

When an article has two functions, the predominant function is to be taken into account for the purpose of classification. Since the Brass Connection Nuts in the present case has the main function of current carrying, it was rightly classified by the Collector (Appeals) under Tariff Item 68 . He attempted to distinguish the case of Sri Ramdas Motor Transport Ltd. v. Collector ofC. Excise, Madras, supra, cited by the learned SDR, submitting that in that case technical literature showing that the hub-bolts and nuts have other than fastening functions was not produced.

6. We have considered the submissions. In the case of Shri Ramdas Motors Transport Ltd., supra, the Tribunal had considered the classification of hub-bolts and nuts used in motor vehicles. After a detailed discussion, the Tribunal had held that the function of the goods as fasteners was patently manifest and, therefore, they were correctly classifiable under Tariff Item 52. Subsequently, in the case of Fit Tight Nuts and Bolts Ltd., supra, the Tribunal again considered the classification of the hub-bolts manufactured by the appellants therein and after referring to a number of decisions of the Courts and the Tribunal held that these hub-bolts are to be classified under Tariff Item 52. Again in the case of the present respondents themselves (Appeal No. ED(SB) 816/83-D) this Tribunal again considered the question of classification of bolts, nuts and screws manufactured by the present respondents and after referring to various decisions rendered by the Courts and the literature produced by the respondent therein, held, that bolts, nuts etc. are classified under Tariff Item 52. (See: Final Order No. 261/1985-D, dated 2nd August, 1985). In that case it was also argued on behalf of the respondents (who is also respondents herein) that fastening was only a incidental

function which was repelled by the Tribunal while holding that the goods are to be classified under Tariff Item 52. In the case of Plasmac Machine Mfg.

Co. Pvt. Ltd. v. Collector of C. Excise, 1991 (51) E.L.T. 161 (SC), it was held by the Supreme Court that the fact that the Tie Bar Nuts' function of fixing the platens, as stated by the appellants therein, and that of fastening as argued by them, are not basically different, and the appellants themselves having called the goods (nuts) we are of the view that the Tribunal is correct in classifying the Tie Bar Nuts under Tariff Item 52. In fact, in another case of the same respondents, namely, M/s. Sundaram Fasteners Ltd., the Tribunal again decided that the fasteners are to be classified under Tariff Item 52. [see: 1993 (64) E.L.T. 87 - Sundaram Fasteners Ltd. v. Collector of C. Excise 7. Following the ratio of the said decision, we agree with the contention of the learned SDR that the Brass Connection Nuts are to be classified under Tariff Item 52 and not under the residuary erstwhile Tariff Item 68. Accordingly, we set aside the findings of the Collector (Appeals) that the Brass Connection Nuts are to be classified under Tariff Item 68 and restore the findings of the Assistant Collector that the same are to be classified under Tariff Item 52.

8. Arguing on behalf of the respondents, Shri C. Manickavasagam, authorised representative of the respondents' company, submitted that both the authorities below erred in classifying the Box Spanner Handle under Tariff Item 51A(i) of Central Excise Tariff. Elaborating on his arguments, he submitted that it is really strange that it should be treated as a Box Spanner since as per Oxford Dictionary spanner is used for turning nuts for tightening. The handle for ACB has to turn only about 60 : "on and off". This is also specially made to be fitted into the apparatus for operating the same to disconnect electric circuit. In reply, Shri M.K. Jain, learned SDR, drew our attention to the impugned order and submitted that the said contentions of the learned consultant were also advanced before the Collector (Appeals) which he had not accepted for the reasons mentioned in the impugned order, which he reiterates.

9. We have considered the submissions. Both the authorities below have considered the said argument of the appellants which were advanced before them.

For ready reference, the relevant portion of the impugned order-in-appeal may be extracted as follows with advantage : " The Assistant Collector has held that the handles of air circuit breakers are nothing but a tool meant to 'trip-on' or 'trip-off the air circuit breaker since one end of it contain a box spanner and the other end is a lever or handle, and its function does not differ in any way other than as a box spanner. T.I. 51-A deals with tools.

Sub-item(1) deals with "Hand tools, the following : Pliers (including cutting pliers), spanners, wrenches, files and rasps, screw drivers (including ratchet types). As per the Concise Oxford Dictionary : reported in Chandigarh Collectorate Trade Notice No. 50/CE/77, dated 18.6.77, 'Spanner' are instruments for turning nuts or screws. The handles manufactured by appellants are operated by turning the hexogenal shapes and the result of which is to trip-on or trip-off electricity and also is in the form of a box spanner. It is admitted by appellants that handle is not permanently fixed to the air circuit breakers, is kept for convenience in packing or despatch...coming to the question of air-circuit breaker, sample of which was shown to me, I find that it is in fact in the shape of a box spanner. Of course, insulation is provided to grip the handle by hand. That does not make it other than a spanner as the function is merely to grip the hexogenal part and by turning it to trip-on or trip-off the current. As such, the order of the Assistant Collector for classifying the air-circuit breaker handle under T.I. 51A(i) as a spanner is correct." We have ourselves considered the submissions. Looking to the nature and function of the Box Spanner Handle, as detailed out by the authorities below and extracted above, we are of the view that the same was rightly classified under Tariff Item 51A(i) of Central Excise Tariff against the claim of the appellants for classifying the same under residuary erstwhile Tariff Item 68. As it is settled law that when an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause, [see : Dunlop India Ltd., AIR 1977 SC 597]. In the result, we do not find any force in the contention raised by the respondents.

10. In the result, the appeal of the Revenue is allowed and the Cross Objections filed by the respondents are rejected.