Pratap Engineering Works Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-23-1995

Reported in : (1995)(78)ELT472TriDel

Appellant : Pratap Engineering Works

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal filed by M/s. Pratap Engineering Works Limited, Jaipur, against the Order-in-Appeal dated 29-9-1987, passed by the Collector of Central Excise (Appeals), New Delhi.

2. The appellants were engaged in the manufacture of steel balls of varying diameters. Prior to 28-2-1986, the goods were classifiable under Item No. 68 of the erstwhile First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as the 'old Tariff'). The appellant claimed exemption thereon as parts of cycles, under Notification No. 102/80-C.E., dated 19-6-1980. On denial of the exemption, a writ petition was filed in the Rajasthan High Court, and the Hon. High Court remanded the matter for re-consideration. In the de novo proceedings, the Assistant Collector of Central Excise, accepted the claim of the appellant. The Collector of Central Excise, New Delhi rejected the appeal filed by the Revenue against the aforementioned order of the Assistant Collector of Central Excise, Jaipur. With effect from 28-2-1986 new tariff schedule under the Central Excise Tariff Act, 1985 (hereinafter referred to as the 'new Tariff) came into force. The assessee sought classification of their product under Heading No. 87.14 of the

new Tariff, as parts and accessories of cycles, and claimed exemption under Notification No. 62/86-C.E., dated 10-2-1986 and Notification No. 162/86-C.E., dated 1-3-1986, as applicable to parts of cycles. The Revenue sought to classify the goods under sub-heading No.8482.00 as ball or roller bearings, in accordance with note 6 to Chapter 84 of the new Tariff. The exemption under Notification No.62/86-C.E. and No. 162/86-C.E. was denied to them. The Assistant Collector of Central Excise, who adjudicated the matter under the new Tariff came to a finding that the balls produced by the appellant were the polished steel balls, and were correctly classifiable under sub-heading No. 8482.00, and that the exemption under Notification No.62/86-C.E. and 162/86-C.E. was not available. On appeal, the Collector of Central Excise (Appeals), New Delhi, upheld the order of the Assistant Collector of Central Excise, Jaipur.

3. The matter was posted for hearing on 6-12-1994, when Shri A.L.

Mathur, Consultant appeared for the appellant. Shri Somesh Arora, JDR represented the respondent.

4. Shri A.L. Mathur, the learned Consultant stated that there is no specific entry for the polished steel balls in the Tariff. He referred to the Tribunal's decision in the case of C.C.E., Jaipur v. National Engineering India Limited, Jaipur - Final Order Nos. E/272-283/94-B1, dated 23-5-1994 [reported in 1994 (72) E.L.T. 588 (Tri.)], and pleaded for acceptance of the appeal.

5. Shri Somesh Arora, the ld. JDR in reply stated that the goods under consideration were polished steel balls, and were of the dimensions as referred to in the Chapter Note 6 to Chapter 84 of the Tariff, and were rightly classifiable tinder sub-heading No. 8482.00, and were not eligible for exemption under Notification No. 62/86-C.E. and Notification No. 162/86-C.E., as the goods falling under Chapter 84 were not covered within the scope of exemption under those notifications.

6. We have carefully considered the matter. The point for our consideration is whether the steel balls manufactured by the appellant are eligible for exemption under Central Excise exemption Notification No. 62/86-C.E., dated 16-2-1986 and

Notification No. 162/86-C.E., dated 1-3-1986.

7. The appellants were engaged in the manufacture of steel balls of varying diameters. They were largely used in different parts of cycles.

Under the old Central Excise Tariff, there was no specific entry to cover such balls, and they were classified under Item No. 68, which covered "all other goods not elsewhere specified", and under Item No.68 specific exemption was provided to cycles and parts thereof. Basing his conclusion on the predominant use, the Assistant Collector of Central Excise, Jaipur had classified the goods as part of cycle, and held them to be eligible to exemption under the applicable notifications. In the new Central Excise Tariff, introduced under the Central Excise Tariff Act, 1985, the various tariff entries were made comprehensive in accordance with the international trade practice. It was done with a view to 'reduce disputes on account of tariff classification'. The tariff was 'made more detailed and comprehensive thus obviating the need for having a residuary tariff item.' Further, goods of the same class were grouped together to enable parity in treatment. (Refer statement of objects and reasons while introducing the bill). Under the new tariff, effective from 28-2-1986, rules of interpretation, section and chapter notes, with various explanations, illustrations, inclusions, exclusions etc., were made part of the tariff. The appellant filed their classification list under the new tariff on 9-10-1986 (effective from 1-3-1986), seeking classification of their goods under sub-heading No. 8714.00, which covered parts and accessories of vehicles of Heading Nos. 87.11 to 87.13. Heading No.87.12 covered bicycles and other cycles including delivery tricycles) not motorised.

8. Cycle is a product of different and diverse parts. It comes in different sizes and styles. There are racing and touring models with multiple gears. There are also speciality cycles with special features.

It is seen from the arrangement of the new tariff that all parts of cycle are not classifiable under Heading No. 87.14, and only those parts are classifiable therein which are not otherwise specified under any other heading or sub-heading of the tariff.

9. Under letter dated 16-10-1986 the Assistant Collector of Central Excise, Jaipur had written to the appellant that in accordance with note 6 to Chapter 84, the steel balls produced by them were classifiable under sub-heading No. 8482.00, and that they were not eligible for exemption under Notification No. 62/86-C.E., dated 10-2-1986 and Notification No. 162/86-C.E., dated 1-3-1986. Note 6 to Chapter 84 provided that 'Heading No. 84.82 applies inter alia to polished steel balls, the maximum and minimum diameters of which do not differ from the nominal diameter by more than 1% or by more than 0.05 mm, whichever is less. Other steel balls are to be classified in Heading No. 73.08". Classification on the basis of the Rules of Interpretation and Section/Chapter Notes has been affirmed by the Hon'ble Supreme Court in a number of decisions. Further the aforesaid note is not only a statutory provision and a part of the tariff, but is specifically on the classification of steel balls. Under Notification No. 62/86-C.E., the parts and accessories of cycles and cycle rickshaws falling under Chapters 83, 85 or 87, were exempted. The exemption under Notification No. 162/86-C.E. was restricted to the goods falling under Heading No. 87.14 only. There was no exemption in favour of the goods falling under Heading No. 84.82. Vide amending Notification No.104/86-C.E., dated 27-2-1986, exemption was extended to the goods falling under Chapter 95, and under Heading No. 73.08. With effect from 20-5-1987 Chapter 40 was added vide Notification No. 150/87-C.E., dated 20-5-1987. On 1-3-1988 for Heading No. 73.08, the Chapter 73 was substituted. In spite of these extensions in coverage for exemption under Notification No. 62/86-C.E., there was no exemption in favour of the goods falling under Heading No. 84.82.

10. Information with regard to the nature (whether polished or not), diameter, difference in nominal diameter etc., had been called for from the appellant. They were afforded an opportunity for personal hearing, and were requested to file the relevant information, records and documents to facilitate correct classification. The matter was heard by the Assistant Collector of Central Excise, Jaipur on 23-10-1986. In their written submissions, dated 30-10-1986, they had admitted that the steel balls manufactured by them were the polished steel balls. They stated "steel balls of cycle grade manufactured by us are inspected, packed and despatched after polish and in that sense these balls may be considered as polished steel balls." Subsequently, also in their application dated 7-10-1988 (listed in the

Tribunal as E/Misc/404/88-B), they have stated that the balls manufactured by them were washed with water and caustic soda "to give a decorative look by barrelling". Barrelling is a process of polishing. By this process of polishing the surfaces of small articles are polished by tumbling them together in the barrel. According to the McGraw Hill Dictionary of Scientific and Technical Terms, II Edition page 1673, polishing on small articles is done by the process of tumbling in which surfaces are polished by tumbling them together in a bariel, alongwith wooden pegs, saw dust and polishing compounds. According to the World Book Dictionary page 2248, tumbling box or barrel is a revolving box or barrel used for polishing small objects, especially of metal by shaking them about with abrasives. According to the publication "How things work' Vol. II "manufacture of the rolling elements (balls or rollers) starts from rod or wire. In a typical production process, pieces of wire are cut off in a press and are then formed into balls or rollers by upsetting between dies. The flash (fin of surplus material) formed in the pressing process is removed between rotating file discs. By means of grinding and tumbling, the diameter is reduced, the specified roundness attained and ' the surface finish improved. Tumbling consists in rotation of the elements with an abrasive in a horizontal cylinderical container. After hardening and tampering came further polishing operations: then the rolling elements are given a high polish by further tumbling with a suitable polishing agent and finally the elements are graded according to diameter" (refer page 174). There appears to be no doubt that the steel balls manufactured by the appellant were the polished steel balls. A point has been made that the steel balls produced by them were not subjected to the process of lapping. The process of lapping is done by rubbing the surface of the object to be polished with such material as cloth, plastic etc., having fine abrasive particles incorporated. For polishing small objects like steel balls with little surface area, the process of barrelling is used for polishing and has been used by the appellant.

11. As regards the difference in diameter, the appellant had submitted a chart showing : (1) sizes in inches; (2) converted sizes in mm; (3) variation as per Note 6 to Chapter 84; (4) variation in the balls produced by them; and (5) variation in a lot. On the basis of the information supplied by the appellant the Assistant Collector of Central Excise, Jaipur held that in respect of steel balls of sizes 3/16

inches, 5/32 inches and 1/8 inches,"the variation of both maximum and minimum diameter from the nominal diameter is in accordance with the variation permissible for the steel balls to be classified under Heading No. 84.82 in view of the Note 6 to Chapter 84 of the Central Excise Tariff Act, 1985". Although the appellant had contended that it was a wrong interpretation, they have not produced any evidence or report to rebut this finding of fact by the original authority. They have not spelt out the basis of their contention.

12. The Assistant Collector of Central Excise, Jaipur had referred to Section Note 2(e) to Section XVII, Note 2(a) to Section XVI, and Note 3 of Section XVII of the Tariff. He has also referred to the general Explanatory Notes of the Harmonised Commodity Description and Coding System (HSN) relating to Section XVII to classify the polished steel balls manufactured by the appellant under sub-heading 8482.00.

13. In view of the above discussion, there appears to be no doubt that the polished steel balls of sizes 3/16 inch, 5/32 and 1/8 inch, manufactured by the appellant, are classifiable under Heading No. 84.82 of the new Tariff, and are not eligible for exemption under Notification No. 62/86-C.E., dated 10-2-1986, or Notification No.162/86-C.E., dated 1-3-1986.Novapan India Limited, Hyderabad v. Collector of Central Excise, Hyderabad, 1994 AIR SCW 3976, the exempting provisions have to be construed strictly. Hon.

Supreme Court in the case of Eskeyef v. Collector of Central Excise, 1990 (49) E.L.T. 649 (SC) in para 14 have held that the exemption notification cannot change classification of goods from one entry to another.

15. In the case of the steel balls of size 1/4 inch, while observing that "the variation of maximum diameter from the nominal diameter is more than the variation permissible for the steel balls to be classified under Heading No. 84.22 in view of Note 6 to Chapter 84," on the basis of the minimum diameter, the Assistant Collector of Central Excise, Jaipur had sought to classify the steel balls of the size 1/4 inch also, under Heading No 84.82. The Note 6 of Chapter 84 contains the expression "maximum and minimum diameters." The word 'and', an adjunctive, cannot be read as 'or', a disjunctive. There is nothing to suggest that unless the

adjunctive 'and' is read as disjunctive 'or', the relevant provision will be unworkable. It is not used in association with any other disjunctive. Once the requirement of note 6 of chapter 84 is not met, the steel balls will be automatically classifiable under Heading No. 73.08, and the steel balls falling under Heading No. 73.08, if they are for cycle and cycle rickshaw, shall be eligible for exemption. The steel balls even if, classifiable under Heading No. 73.08, but not for cycles or cycle rickshaws, will not be eligible for such an exemption.

16. The appellants have relied upon the Tribunal's decision in the case of Collector of Central Excise, Jaipur v. National Engineering India Limited, 1994 (72) E.L.T. 588 (T). It is seen that in that case before the Tribunal, the steel balls were not considered as polished balls, while in the case before us, the appellants themselves had admitted that the steel balls manufactured by them were polished steel balls (refer their letter dated 30-10-1986, at page 43 of the paper book.) 17. Taking all the relevant considerations into account, we reject the appeal in so far as the steel balls of sizes 3/16", 5/32" and 1/8" (inches) are concerned, and accept the appeal in so far as the steel balls of size 1/4 inch are concerned. The appeal is disposed of accordingly.