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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-21-1995

Reported in : (1996)(85)ELT279TriDel

Appellant : Collector of Customs

Respondent : Tata Export Ltd.

Judgement :
1. This is an appeal filed by the Department against the impugned order dated 31-5-1985 passed by the Collector of Customs (Appeals), Bombay.

The dispute is in respect of Gate valves imported by the respondents.

Whether Gate Valves made out of alloy steel is classifiable under Heading 84.61(1) of the Customs Tariff as claimed by the Department or under Heading 84.61(2) as per the assessee. The respondents M/s. Tata Export Ltd. had imported a consignment of Alloy Steel Gate Valves (C-5) 12" 300 lbs. and Alloy Steel Gate Valves (C-5) 18" 300 lbs. which was assessed to duty under Item No. 84.61(2) of Customs Tariff Act, 1975 vide Bill of Entry Cash No. 1898 dated 6-3-1984. According to the Department, the said valves imported not being Isolating Valves, the same merited classification under Item 84.61(1) of Customs Tariff Act, 1975 instead of 84.61(2) already applied. Accordingly demand-cum-show cause notice for short levy was issued and the same was confirmed by the Asstt. Collector as per order dated 28-1-1985. On appeal filed by the party, the Collector(Appeals) accepted the contention of the party and accordingly ordered

for reassessment of the imported valves to customs duty under sub-heading 2 of Heading 84.61 of the Customs Tariff by allowing the appeal. The findings of the Collector (Appeals) is as follows : "I have taken into consideration the contention of the Asstt.

Collector and the contention of the appellants. I find that the Tariff structure of Heading 84.61 of the CTA ,1975 is such that under sub-heading (2) of the Heading 84.61, valves made of corrosion resisting material such as stainless steel, nickel, monel, incloy, haste alloy etc. are liable to be classified under that sub-heading, i.e., sub-heading (2) of Heading 84.61 of the Customs Tariff. In other words, the scope of classification under sub-heading (2) of Heading 84.61 as far as valves made of corrosion resisting material is concerned, is very clear as metals that have been mentioned under that sub-heading, are merely by way of corrosion and are not exhaustive. In other words, metals mentioned thereunder are merely illustrative and not exhaustive. It is a fact that alloy steel is also a corrosion resistance steel and is used normally in materials which are exposed to intense heat and corrosion by means of heat, and since the imported valves were made out of alloy steel which was corrosion resisting material, they were correctly classifiable under sub-heading (2) of Heading 84.61 of the Customs Tariff. The expression "Valves made of corrosion resisting materials, such as ..." will include under its ambit any valve made out of corrosion resisting material, and even if the imported valves were not isolating valves they were still assessable to Customs duty under sub-heading (2) because they were made of corrosion resisting materials. The Asstt. Collector's version that alloy steel was not corrosion resisting material, was not based on any technical opinion. Even if the conclusion that the imported valves were not isolating valves, had to be accepted still, this does not detract from the fact that the wordings "valves made out of corrosion resisting materials" had a very wide ambit under sub-heading (2) of Heading 84.61 of the Customs Tariff so as to include under it non-isolating valves as well; provided, they were made out of corrosion resisting material." 2. When the matter has come up for final hearing, none appeared for the respondents. We have proceeded to pass this order after hearing Shri Mohan Lal, JDR appearing for the Revenue. While reiterating the grounds taken by the Department, he submitted that Directorate General of Technical Development confirmed that the valves are not covered by

Heading 84.61 (2) of the Customs Tariff Act, 1975 and technical opinion furnished by the Deputy Chief Chemist on the above item confirmed that the said type of valves are not listed under Item 84.61(2) of C.T.A.,1975 and therefore squarely are classifiable under Heading 84.61(1). He drew our attention to the copy of the technical opinion given by Deputy Chief Chemist dated 29-7-1985.

3. We have considered the submissions and perused the records. We find that the Asstt. Collector has passed an order dated 28-1-1985 holding that the item is classifiable under Item 84.61(1) but the test report referred to by the Department is dated 27-9-1985 and subsequent to the order passed by the adjudicating authority and furthermore it is not clear whether sample of the item in question was considered by the Deputy Chief Chemist while giving opinion and in the absence of any evidence to show that the copy of the report has been supplied to the party and in view of the reasons given by the Collector (Appeals) in upholding the contention of the respondent, we do not find any merit in the appeal filed by the Department and accordingly the appeal is dismissed.

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