

Jayashree Insulators Ltd. Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-17-1996

Reported in : (1996)(88)ELT82TriDel

Appellant : Jayashree Insulators Ltd.

Respondent : Collector of C. Excise

Judgement :

1. This is an appeal filed by M/s. Jayashree Insulators Ltd. Rishra being aggrieved with the order-in-appeal dated 30-9-1985 passed by the Collector of Central Excise (Appeals), Calcutta.

2. The matter relates to the valuation of the insulators made of porcelain when they were supplied with the Galvanised Iron (GI) pins.

GI Pins were bought out items and on the orders of the customers were supplied separately and invoiced separately. The Revenue had alleged by issuing six separate show cause notices for different periods that the cost of GI Pins should be taken into account for determining duty liability of the insulators. The period involved in these six notices is from 1975 to 30-4-1983. Prior to 1-4-1979, the insulators were classifiable under Item No. 23B of the Central Excise Tariff and with effect from 1-4-1979 by virtue of insertion of Explanation II under Entry No. 23B they became classifiable under Item No. 68 of the Central Excise Tariff. The Assistant Collector who had adjudicated all the six show cause notices by a consolidated order dated 28-8-1984 had held that GI Pins were not integral parts

of the insulators but an accessory supplied at the option of the customer without being fitted with the insulators supplied. He had set aside the various demand notices as mentioned in the order. The department not being satisfied with this order of the Assistant Collector had filed an appeal with the Collector of Central Excise (Appeals), Calcutta who had set aside the order-in-original and confirmed the demands for recovery of the duty raised under different show cause-cum-demand notices.

3. The matter was heard on 17-05-1996, when Shri J.S. Agarwal, the learned Advocate appeared for the appellants. Shri G.D. Sharma, the learned JDR represented the respondent/Revenue.

4. Shri J.S. Agarwal, the learned Advocate briefly stated the facts and assailed the impugned order-in-appeal both on merits as well as on limitation. He submitted that the GI Pins were not manufactured by the appellants. They were bought out items on specific demand of few of their customers and were not supplied in all cases with the insulators but only in few cases. They were working under invoice value assessment as the goods were classifiable for most of the time under Item No. 68.

They had raised separate invoices for GI Pins as no process of manufacture had been undertaken by them with respect to such Pins. He referred to the various decisions in support of his plea that as GI Pins were bought out optional goods their cost was not to be included in the assessable value of the insulators. On limitation, he referred to the law of limitation as applicable during the period under consideration and submitted that as in respect of the show cause notices dated 29-9-1981, 25-3-1982 and also partly show cause notice dated 21-5-1982 while the extended period of limitation had been invoked, there was no allegation of suppression or clandestine removal in the notices and therefore, there was no justification for determining duty for the larger period. For the rest of the show cause notices also, he submitted that as on merits the value of the GI Pin was not includible. These notices also merited to be vacated.

5. In reply, Shri G.D. Sharma, the learned JDR stated that the goods supplied were Pin insulators and that the insulators had no use without the pins. As the Pin

was an essential requirement of the goods supplied, their value had to be taken into account for arriving at the duty liability. He further stated that the fact of supply of GI Pin was not disclosed to the department and that separate invoices have been raised which were not available to the department.

6. In rejoinder, the Learned Advocate referred to ISI Specification and submitted that in the term "insulator" unless specifically amplified are not included, GI Pins which are a separate commodity and are used only at the time of the fixation at the poles.

7. We have carefully considered the matter. With effect from 1-4-1979 the goods were classifiable under Item No. 68 and the appellants were availing of the benefit of exemption Notification No. 120/75-C.E., dated 30-4-1975. These GI Pins were bought out items and were supplied separately. At the time of the clearance, they did not form part of the insulator and were required to be used only when the insulator was to be fitted at the pole. The learned Advocate had furnished the information that the GI Pins were not supplied with each and every insulator but only in few cases where the customers specifically made a demand for the same. They did not manufacture these GI Pins which are an item of iron and steel and are produced by a separate industry. They purchased, supplied and raised separate invoices under the understanding that these trading activities had nothing to do with the Excise Department.

8. GI Pins were also classifiable under Item No. 68 and even otherwise when such goods under Item No. 68 are used in the manufacture of finished Item No. 68 goods, input duty relief was available.

9. The learned Advocate had referred to the Tribunal's decision in the case of Eureka Forbes Ltd. v. Collector of Central Excise - 1996 (13) RLT 426 (Tribunal). He had also referred to another Tribunal's decision in the case of Diamond Clock v. Collector of Customs - 1988 (34) E.L.T.662 (Tribunal) which had been confirmed by the Hon'ble Supreme Court as reported at 1989 (44) E.L.T. A24. Although, we find that the facts in those cases are not completely identical, they go to show that when the goods are bought out or optional and do not enter into manufacturing process of the goods cleared, their cost is not to be clubbed with

the excisable goods under assessment.

10. As the excisable goods cleared were insulators and the GI Pin is in the nature of an insulator fitting, the cost of the GI Pin in the hands of the appellants may not be includible while assessing the insulators to excise duty. As the process of fixation reveals it is only when the insulator is finally used by the customer, the GI Pin is required. It is not a part of the insulator in the hands of the manufacture of insulator.

11. Thus, on merits we consider that the appellants have a case. In view of this, we are not going into the question of limitation.

12. Taking all the relevant considerations into account, we accept the appeal and as a consequence the order-in-appeal passed by the Collector of Central Excise (Appeals), Calcutta is set aside.

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