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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-08-1983

Reported in : (1983)(12)ELT533TriDel

Appellant : Hydraulics Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This case relates to demand of Central Excise duty from the appellants in respect of pistons, a component of shock absorbers, manufactured by them. The case was heard on 8-2-1983. Shri K. Sarvanai, on behalf of the appellants, showed a sample each of the shock absorber, piston and piston rod assembly. He brought to introduce an affidavit of the appellant's Works Manager regarding the function which the piston performed but this being fresh evidence was not allowed to be introduced by the Bench.

2. Shri Sarvanai then argued that all parts of motor vehicles falling under Item 34A of the Central Excise Tariff were exempt from duty under Notification No. 99/71-CE, except the parts specifically named in the said notification and excluded from the purview of the exemption. Entry No. 6 added in the said exclusion list on 17-3-72 by amending Notification No. 95/72-CE read as under : - Shri Sarvanai maintained that the manner of listing pistons as sub-entry of Entry No. 6 along with the other two sub-entries (c) and (d), namely, Gudgeon pins and Circlips, showed that the Government intended to exclude from exemption only those pistons which were used in internal combustion engines and were known to the trade and the

industry as pistons and that, therefore, the subject pistons, being components of shock absorbers and not of internal combustion engines, even though specified in technical catalogue as pistons, were not pistons as referred to in the exemption notification. He added that the show cause notice issued to them was defective inasmuch as both the show cause notice as well as its corrigendum called upon them to show cause why duty should not be charged on piston rod assembly while the demand was confirmed asking them to pay duty on a different product, namely, piston, that piston rod assembly was not a dutiable item since it was exempt under Notification No. 99/71-CE and in respect of duty on piston they were never called upon to show cause. He stated further that in passing the Order-in-Original, the Assistant Collector had been influenced by the Collector's Trade Notice No. 262/78 dated 20-12-1978 and had not applied his own mind to the matter, that alternatively, the appellants could not be denied the exemption under the other Notification No. 153/71-CE on the ground of non-observance of Chapter X procedure because during the material period neither the Department nor the trade were aware that pistons used in shock absorbers were dutiable. In any case, since they had used all the subject pistons captively in their factory for manufacturing piston rod assembly which in turn is/a component of shock absorbers, all that they needed for observance of Chapter X procedure was to get a L-6 licence which was only a technical formality. He stated finally that the subject pistons were not marketable as such and that only piston rod assembly in which they were used was marketable. On a query from the Bench, Shri Sarvanai stated that the appellants had not advanced this argument at the original stage as they were never called upon to show cause against durability of pistons.

3. Shri Raghavan Iyer, on behalf of the Department, admitted that the show cause notice as well as its corrigendum were defective but he maintained that the defect was cured in the Order-in-Original in which the Assistant Collector had clarified that the duty was demanded only in respect of pistons and not in respect of piston rod assembly. Though the show cause notice had invoked Rule 9(2) for demanding duty for the entire period, in the Order-in-Original the Assistant Collector had himself given the finding that this was not a case of clandestine removal of goods but a case of classificative dispute and accordingly the Assistant Collector reduced the demand to a period of one year only under Rule 10.

Exemption under Notification No. 153/71-CE could not be granted to the appellants as they had not observed the Chapter X procedure which was a condition precedent for this exemption. As regards the exemption under Notification No. 99/71-CE, it could not be granted to the appellants because the subject pistons were also a motor vehicle part and were known to the trade as piston only and not by any other name. Hence, argued Shri Raghavan Iyer, there was no scope for any ambiguity merely because of pistons being specified in the exclusion list as a sub-entry of Entry No. 6 in Notification No.99/71-CE.4. We have carefully considered the matter. We find force in the appellant's plea that duty has been demanded from them without giving them a proper show cause notice in the first instance. This is a question of fact which has been admitted even by the Department's representative. His argument that the defect in the show cause notice was cured in the Order-in-Original is hardly acceptable. The appellants were entitled to a proper notice calling upon them to show cause why duty should not be demanded in respect of the subject pistons before the Order-in-Original was passed. Since no such notice was given to them, we held the subsequent proceedings culminating in the Order-in-Original and Order-in-Appeal as bad in law and, accordingly, we quash them. There is no point now in remanding the case to the lower authorities for fresh adjudication in accordance with law since, in view of the Assistant Collector himself having held that Rule 10 and not Rule 9(2) was applicable and the time-limit for recovery of duty under Rule 10 for the material period having expired long ago, it will be an exercise in futility. In view of our these findings, it is unnecessary for us to go into the other arguments and counter arguments made by both sides.

5. The two show cause notices issued by the Superintendent of Central Excise, Group IX, 7 Haddows Road, Madras, one dated 7-8-76 and the other dated 8-11-76 were in respect of "piston rod assemblies" which were said to be manufactured by M/s. Hydraulics Ltd., Madras. In his adjudication of the demand under the two show cause notices, the Assistant. Collector passed an order dated 16-8-79 concluding that only pistons were dutiable under Tariff Item 34-A. It needs to be seen whether in the decision of the Assistant. Collector the pistons for the shock absorbers were the subject of the two demands.

6. It needs to be noted very clearly that the goods on which duty was demanded were "piston rod assemblies" and not pistons. It has been argued that the piston rod assemblies include the pistons and therefore the action of the Assistant Collector in ordering recovery of duty on pistons was not inconsistent with the demands because all that he had done was to limit the recovery to pistons which form part of the piston rod assemblies.

7. As the demands spoke of "piston rod assemblies," they must be understood to refer only to assemblies of piston rods. The "piston" therefore is not an object for the purpose of determining that it is one of the parts on which the demands were issued. It is a word (adjective) which defines the word "rod". Therefore, the question of "what kind of rod the Superintendent had in mind, the answer would be "A piston rod". The assembly does have a piston rod quite distinct from the piston. This piston rod is a member to which the piston is attached. Therefore, it is known as a piston rod. There may or may not be a piston attached to it at a given time but reference to a piston rod must be understood as a reference to the rod and not to the piston even if the piston is attached to it. There are similar rods in a motor car ; for example, the connecting rod which connects the engine piston to the crankshaft is known as piston rod or connecting rod. This rod has an assembly of its own since having a split big end for bolting it to the crank pin needs a number of accessories such as the bolt or screw that holds the two split ends together. In addition, before the big end is fastened on the crank pink, plain bearing inserts with soft metal faces are inserted between the connecting rod and the crank pin to facilitate movement and to reduce wear. The plain bearing inserts are of definite size and thickness to fit the groove in the split ends of the rod and together with the connecting rod and the fastening bolt form the assembly of the connecting rod. When we speak of connecting rod assembly or piston rod assembly, we refer to the rod and not the piston. Nor can the phrase "piston rod assembly" be understood to mean "piston-and-rod assembly." For this reason it must be held that there has been no show cause notice for the piston.

8. The show cause notice both demanded duty under Rule 9(2). But the Assistant Collector in his order dated 16-8-79 held that Rule 9(2) was not applicable since there was no clandestine removal. Therefore, he held that only one year time-limit

was valid, evidently meaning that the demands were enforceable only under Rule 10, although his order does not specify that rule. It has been held that question of a rule does not vitiate a proceeding if the power exercised is conferred on the decision-making authority, because the rule number or section number is not material so long as the power sought to be exercised is legally and validly exercised. The question now is whether that is the case in these demands and whether the recovery of duty under Rule 10 remains unvitiating by quotation of Rule 9(2) whereas the power was exercised under Rule 10. Rule 9(2) was resorted to in the demand because there was suspicion that there had been suppression of the production in respect of which the demands were issued. However, as we have seen, the demands were enforced by exercising power under a different rule. It is not that the same power was exercised as had been proposed under the show cause notice but that a different power were employed under circumstances different from the ones in the mind of the issuer of the show cause notice. The quotation of Rule 9(2) was indicative of the circumstances in which he considered the short levy had arisen. Therefore, the issue of show cause notice under Rule 9(2) was incorrect and must be struck down. In the result the order of the Assistant Collector was not based on a show cause notice issued validly in accordance with the law.

9. For these reasons, the order of the Appellate Collector is set aside and the appeal/is allowed.

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