(1997) 02 SC CK 0144

In the Supreme Court Of India

Case No : Civil Appeals No. 4084 Of 1986 With No. 1322 Of 1988

Alcebex Metals Pvt. Ltd. APPELLANT

Vs

Collector of Central Excise, Jaipur RESPONDENT

Date of Decision : 12-02-1997

Acts Referred:

Citation : (1997) 92 ELT 465 : (1997) 11 SCC 613

Hon'ble Judges : A. M. Ahmadii, C.J;Sujata V. Manohar, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The Government of India by their order in Revision dated 24-11-1978 concluded that copper rods and bars manufactured by the appellant could properly be classified under Item 26A of the Central Excise Tariff and not under Item 68 thereof. It, therefore, set aside the classification under the latter Entry. The appellant thereafter classified their product under Item 26A and in view of the exemption available to them they did not pay the duty on the said goods. In fact, they claimed refund of the duty which they had paid on the classification of the goods under Item 68. The Assistant Collector of Central Excise, Jodhpur, however, held that Hollow Rods manufactured by the appellant were not covered under Tariff Item 26A and would be liable to excise duty under Tariff Item 68. The appeal preferred by the appellant was rejected by the Appellate Collector. They, therefore, approached the Customs, Excise and Gold (Control) Appellate Tribunal (for short 'the Tribunal') questioning the correctness of the decision of the Assistant Collector upheld in appeal by the Appellate Collector. The Tribunal also affirmed the view taken by the authorities below that Hollow Rods manufactured by the appellant would properly fall under Item 68 of the Excise Tariff. Aggrieved by the said decision, the appellant has preferred Appeal No. 1322/88 arising from the refund claim.

2. It may next be mentioned that on 16-1-1965 the Deputy Superintendent of Central Excise, Jodhpur, advised the appellant to take out a Central Excise

Licence as the manufactured product, namely, Hollow bars/rods fell within Tariff Item 26A. However, on 29-4-1976 after Item 68 came to be introduced in the Tariff, it was informed that the product now fell within Tariff Item 68 and not under Tariff Item 26A. On receipt of this communication, the appellant requested the Assistant Collector to treat Hollow Rods under Tariff Item 68 and submitted a fresh classification list. In the meantime, the High Court of Gujarat took the view that Hollow Rods fell within Tariff Item 26A(1). The appellant on learning about the said decision of the High Court approached the Assistant Collector for re-classification of Hollow Rods under Item 26A(1) of the Excise Tariff but this request was turned down. The Government of India pointed out by their letter dated 24-11-1978 that the goods fell within Tariff Item 26A. It was pursuant to this order that the appellant submitted a revised classification list classifying Hollow Rods under Tariff Item 26A(1) and sought refund of the duty paid on the erroneous classification of the goods under Tariff Item 68. We have already pointed out earlier that the Assistant Collector as well as the Appellate Collector and the Tribunal concluded that Hollow Rods would properly fall within the newly inserted Tariff Item 68 and not 26A(1) of the Excise Tariff. The appellant, therefore, has questioned that decision in C.A. No. 4084/86.

3. C.A. No. 4084/86 relates to the period from December, 1978 to April, 1979 whereas C.A. No. 1322/88 relates to the period prior thereto, i.e., May 1976 to 24th November, 1978. Since the question at issue in both these appeals is the same, we proceed to dispose them of by this common order.

4. The appellants manufacture bars and rods including hollow rods from copper alloys. Their product is known in the market as hollow rods and they are of different sizes and shapes. A round hollow product which is normally produced by extrusion without subsequent cold working and in which the wall thickness is usually larger in proportion to the bore and is known as a hollow rod - see Glossary of terms applicable to wrought products in copper, zinc and their alloys, British Standards Institution, B.S. 1420 : 1965. In the Indian Standard Glossary of terms for copper and copper alloys (Part I) (Second Revision) hollow rod is described as a round hollow product, the cross-section of which completely enclose a void or voids also known as hollow bar in which the wall thickness is usually greater in proportion to the bore. In the order passed by the Government on 24-11-1978 it is stated that samples of the goods were shown during the course of personal hearing and they appeared to be in the shape of bars, flats and rods. It would thus be seen that there can be no dispute that the goods manufactured by the appellants are hollow rods/bars and the only question is whether they could be classified under Tariff Item 26A(1) or under Tariff Item 68. They were classified under Tariff Item 26A(1) before the Excise Tariff came to be amended and Item 68 added thereto. It was only after Item 68 was added to the Tariff that the authorities insisted that the product would fall under that Item and not under Tariff Item 26A. Tariff Item 68 is the residuary item.

5. Tariff Item 26A(1) refers to a product in any crude form including ingots, bars,

blocks, slabs, billets, shots and pellets. Under the ISI Standard to which we have referred earlier bar/rod has been described as any extruded, drawn, cold or hot rolled, forged, cast or combination of any of these processes of solid section supplied in straight length, whose width or distance between parallel faces is greater by 6 mm and the sub-entries following the same show that they can be in different shapes. Therefore, the term 'bar' in Entry 26A(1) would also include a rod. As pointed out earlier hollow bars are a product known to the market as such and, therefore, there can be no doubt that even by commercial parlance test the product is known by the same name. That being so, we think that it stands attracted by Item 26A(1) as was held by the Govern ment of India. We are, therefore, of the opinion that the authorities below were wrong in classifying the goods as falling within Tariff Item 68 and not under Item 26A(1). We, therefore, allow both the appeals reversing the orders of the authorities below.

6. So far as the question of refund is concerned, it will have to be determined in accordance with the decision of the Constitution Bench of this Court in Mafatlal's case read with the format order passed pursuant thereto. The matter will go back to the Assistant Collector of Central Excise for deciding the question of levy in the light thereof. The appeals will stand so disposed of with no order as to costs.

