
(1994) 09 SC CK 0019

In the Supreme Court Of India

Case No : Civil Appeal No. 730 Of 1985

Vee Kayan Industries, Batala

APPELLANT

Vs

Collector of Central Excise, Chandigarh

RESPONDENT

Date of Decision : 20-09-1994

Acts Referred:

Citation : (1996) 83 ELT 262 : (1995) 3 SCC 605 Supp

Hon'ble Judges : R. M. Sahai, J;N. P. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.M. Sahai and N.P. Singh, JJ.—The appellant, a small-scale unit engaged in the manufacture of nuts and bolts falling under Item 52 of Customs and Excise Tariff, was issued show cause notice by the Assistant Collector as to why the valuation of sale of the goods, whether excisable or not, may not be included for determining the total value of sales of the appellant. The appellant was further directed to show cause as to why penalty should not be imposed as it had wrongly declared the aggregated value of clearance. In reply to the show cause notice the appellant claimed that the sale of bright bars and bright bar scrap could not be subjected to fresh duty as the appellant had purchased bars from the market and had made them brighter only consequently, they were nothing but bars and not a different commodity as mentioned in the show cause notice issued by the Assistant Collector. It was further claimed that items, such as rivets, C.I. castings, washers, scrap, etc., of which sale was made by the appellant being exempt under notifications, their value could not be aggregated with the value of sales of nuts and bolts to determine if the sale was beyond the specified limit. None of the objections raised by the appellant were accepted either by the Assistant Collector or by the Tribunal.

2. Shri A.K. Sinha, the learned Counsel for the appellant assailed both the findings and urged that the value of sales of exempted items could not be aggregated with the sale of nuts and bolts to determine if the value of sales

exceeded specified limit is concerned. The submission does not appear to have any merit. A notification granting exemption to a particular item does not result in rendering the item as non-excisable. It only enables a manufacturer to claim exemption on conditions mentioned in the notification. Therefore, the submission that the Tribunal committed any error of law in aggregating the sales of exempted items cannot be accepted.

3. But the submission that bright bars and bright scrap could not be subjected to levy appears, in the facts and circumstances of the case, to be well founded. The Tribunal found that the appellant had purchased duty-paid round bars from the market and these bars were drawn through a slight narrow diameter and the bright bars emerged from the narrow die. It was not-disputed before the Tribunal nor it is disputed in this Court that Tariff Entry 26AA(ia) levies duty on bars. The Tribunal held that passing of the round bars through slight narrow diameter resulted in change of form and shape and since this transformation of round bars into bright bars resulted in bringing out a distinct and different commodity, the appellant was liable to pay duty on it. This finding does not appear to be correct in law as in absence of any material on record or any finding by the Tribunal that mere drawing of a round bar through a slight narrow diameter resulted in bringing out a new commodity, the finding that it changed in form or shape without any evidence cannot be accepted. In the absence of any material to show that in commercial circle the bars and bright bars are different, the inference drawn by the Tribunal cannot be upheld.

4. In the result, this appeal succeeds and is allowed. It is held that in the facts and circumstances of the case, the value of sales of bright bars and bright bar scrap could not be aggregated in the value of sales of nuts and bolts. There shall be no order as to costs.