

Collector of Central Excise

Vs

Malleable Iron & Steel Castings Co. (P) Ltd.

Civil Appeal No. 1807 of 1987

(S. C. Sen, M. Srinivasan JJ)

04.12.1997

ORDER

1. As many as five points fell for consideration before the Tribunal in this case. The points are :

"(i) Whether the goods in question would attract duty under Item 25 or whether the process of machining would take out a casting from TI 25 to TI 68;

(ii) If the goods are classified under TI 68, whether Notification No. 89 of 1979 would be applicable;

(iii) Whether the show-cause notice dated 8-1-1982 is barred by time;

(iv) Whether the invoice value has been influenced by other considerations;

(v) Whether the penalty imposed is justified."

2. Points (ii) and (iii) were held against the department. The department has come up in appeal in respect of these two points.

3. So far as Point 3 is concerned, the only question is whether there has been any suppression of facts by the assessee. The Tribunal has categorically found that the department could not take the plea of any suppression inasmuch as the respondent had written to the Superintendent requesting for clarification about the classification of the goods. Further letters were exchanged about the matter between the Superintendent and the respondent before the goods were finally classified. This goes to show that the department was fully aware of the nature of products manufactured. The Tribunal held that the department was unable to show that there was any suppression of facts by the respondent. We are not inclined to interfere with this finding of fact made by the Tribunal.

4. The second point relates to whether Notification No. 105/80-CE will be applicable to goods which were cleared under TI 68 only. The case of the department is that the goods which were cleared from the factory at Andheri (Kurla) are to be clubbed together with the goods which were cleared from the Parel factory. The products cleared from the factory at Andheri (Kurla) are rough castings. The products cleared from the Parel factory are castings after machining. The department has decided to tax the products emerging from Andheri (Kurla) factory under TI 25 and the castings after machining emerging from the factory at Parel under TI 68.

5. The exemption notification is as under :

"Exemption to first clearances of Rs. 30 lakhs. - In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 89/79 - Central Excises dated the 1st March, 1979, the Central Government hereby exempts goods, falling under Item 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), (hereinafter referred to as the said goods), in respect of the first clearances of the said goods for home consumption by or on behalf of a manufacturer from one or more factories up to a value not exceeding rupees thirty lakhs, cleared on or after the 1st day of April in any financial year, from the whole of the duty of excise leviable thereon."

6. The language of the exemption notification is quite clear. It exempts goods valued up to Rs. 30 lakhs falling under TI 68 from taxation. The goods manufactured by the respondent at its factory at Andheri were taxed under TI 25. Therefore, there cannot be any question of adding value of these goods to the value of the goods cleared under Item 68 from the Parel factory for deciding whether the respondent could be given benefit of the aforesaid notification.

7. We are of the opinion that the Tribunal has come to a right decision. The appeal is dismissed. There will be no order as to costs.