SUPREME COURT OF INDIA

Ape Belliss India Ltd.

Vs.

Union of India

C.A.No.3853-54 of 1992

(N. Santosh Hegde and K.G. Balakrishnan JJ.)

31.07.2001

JUDGMENT

N. Santosh Hegde, J.

The appellant in these appeals imported stainless steel rolled special blades sections and filed a Bill of Entry claiming classification of the said imported goods under Tariff Heading 73.15(1). The Assistant Collector classified the said goods under Heading No.73.33/40(2) of the Customs Tariff on the ground that the chromium content of the goods imported is 10.81 per cent which made the imported goods classifiable as stainless steel. On appeal, the Collector held that since the chromium content of the stainless steel is more than 8 per cent, it will have to be considered as an alloy of stainless steel, therefore, he classified the said imported goods under Tariff Heading 73.15(2) as stainless steel. Against the said order of the Collector, the appellant preferred appeals before the Customs, Excise and Gold (Control) Appellate Tribunal (for short the tribunal). The tribunal agreed with the Collector and held that he was justified in classifying the goods under Heading 73.15(2) since the said goods specifically fell within the Entry referable to the sections of stainless steel under Tariff Heading 73.15(2). It is against the above order of the tribunal that the appellant has preferred these appeals. In these appeals, a short question as to the interpretation of a tariff public notice No.56/78 dated July 19, 1978 is involved. Both the appellant and the respondent rely on the same. The said notice reads thus: It is for the information of the Importers, Custom House, Agents and all others concerned that alloy steel which is known as stainless steel in the trade and having more than 11% Chromium will be continued to be considered as stainless steel for the purpose of classification under the Custom Tariff Act, 1975. There is no dispute that the above notice is binding on the Department in view of the decisions of this Court rendered in *Steel Authority of India v. CC, Bombay*[1] *and Paper Products Ltd. v. Commissioner of Central Excise*[2]. Mr. Bhatt, learned senior counsel for the appellant, urges that as per the language of the above notice, for a goods to be classified as stainless steel, it will have to satisfy the twin conditions referred to in the said notice i.e. the alloy steel imported should be known as stainless steel in the trade and in addition to that it must have more than 11 per cent chromium in the said alloy steel, otherwise according to the appellant, it will have to be treated as an alloy steel only and should be classified under the residuary

Head in Tariff Heading 73.15(1) i.e. not elsewhere specified. But, Mr. Krishnamurthi Swami, learned counsel appearing for the respondents/Revenue, argues that as per the above tariff public notice if an alloy steel is known as stainless steel in the trade, the same will have to be considered as stainless steel for the purpose of classification under Tariff Heading 73.15(2). He says that the said notice also contemplates any alloy steel which has more than 11% chromium in it, also to be treated as stainless steel for the purpose of classification under Tariff Heading 73.15(2). In other words, it is the contention of Mr. Swami that the said notification refers to two types of alloy steels which will have to be considered as stainless steel for the purpose of classification under the Customs Tariff Act, 1975 i.e. an alloy steel which is known as stainless steel in the trade and the other an alloy steel which has more than 11% chromium as a content in the said alloy steel. We are unable to accept the contention of Mr. Swami. A plain reading of the Section clearly shows, as contended by Mr. Bhatt, that for an alloy steel to be considered as stainless steel, it will have to satisfy two conditions i.e. the alloy steel should be known in the trade as stainless steel and further it should contain 11% chromium as a component of the alloy steel. This is clear from the use of the word and. If the intention of the trade notice was to treat the two types of alloy steels as stainless steel then it would have been made clear by using the word or instead of the word and. In the said view of the matter, we are of the opinion that if an alloy steel is known as stainless steel in the trade and also has more than 11% chromium in it then alone the same could be considered as stainless steel and not otherwise. In the instant case, assuming that the alloy steel imported by the appellant is known in the trade as stainless steel still since on an analysis it is found that the chromium content is less than 11%, the same could not have been classified as stainless steel for the purpose of Customs Tariff Act, 1975 because the second condition as to the content of the chromium is not satisfied. In our considered opinion, the goods imported by the appellant will have to be classified under Tariff Heading 73.15(1) since it is not specified anywhere else. For the reasons stated above, these appeals are allowed and the impugned orders are set aside. No order as to costs.

[1]*2000 (88) ECR 764 (SC)*
[2]*1999 (112) ELT 765 (SC)*