

SUPREME COURT OF INDIA

Krishna Steel Industries

Vs.

Collector of Central Excise, Patna

C.A.No.336 of 1999

(S. N. Variava and A. K. Mathur JJ.)

02.09.2004

JUDGMENT

1. These Appeals are against the judgment of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as "CEGAT") dated 28th July, 1998. As the question involved in all these Appeals is same, the same are being disposed of by this common order.

2. All the Appellants manufacture forged steel grinding media balls (hereinafter called "balls"). It is an undisputable position, and we were shown a ball, that it is a steel ball. It appears that in respect of two Appellants at an earlier stage the Collector of Excise had concluded that the balls would fall under the then Tariff Item 26AA. It was so concluded on the basis that the balls were roughly shaped forged items.

3. With effect from 1st March, 1986 new Tariff came into existence. The new Tariff Item 7208 reads as follows:-

"72.08

7208.00

Pieces roughly shaped by rolling or forging of iron or steel, not elsewhere specified."

Tariff Item 7308 is a residuary item.

4. According to the Respondents Tariff Item 72.08 cannot apply and these balls are covered by the residuary Item 73.08. Their claim is based on Chapter Note 6 to Chapter 84 which reads as follows:

"6. Heading No. 84.82 applies, inter alia, to polished steel balls, the maximum and minimum diameters of which do not differ from the nominal diameter by more than

1% or by more than 0.05 mm, whichever is less. Other steel balls are to be classified in heading No. 73.08."

5. The authorities below, have on basis of Note 6 held that these balls are classifiable under Tariff Item 73.08. We are in complete agreement with the view taken by the Collector and the Tribunal. Even though earlier these balls could have been classified under the then Tariff Item No. 26AA, with the incorporation of Chapter Note 6, the Item now has to be classified either under Chapter 84 or under Chapter 73. These balls cannot be classified under Chapter 84 and thus necessarily have to be classified under Chapter 73.

6. We are unable to accept the submission that it still continues to be a forged item and therefore must fall under Tariff Item 7308 (which according to Counsel for the Appellant, is equivalent to old Tariff Item No. 26AA). Such an argument, in our view, merely needs to be stated to be rejected. An Item has to be classified in accordance with Chapter Notes. The only reason these balls were earlier classified under old Tariff Item No. 26AA was because there was no such Chapter Note. Once Chapter Note 6 was introduced, the classification must be in accordance therewith,

7. It must also be mentioned that an attempt was made to rely on a Board Circular. We, however, find that the Circular was not relied upon before the Collector nor before the Tribunal. Material not presented before the lower authorities and/or Tribunal cannot be allowed to be relied upon for the first time in this Court. Even presuming that the Circular could be shown to this Court, we find that the Circular merely deals with forged items. The Circular does not deal with such types of balls. Thus, the Circular does not mention Chapter Note 6. The Circular therefore has no application.

8. We thus see no reason to interfere. The Appeals are dismissed. There will be no order as to costs.