A M/S. EASTERN DIECASTING INDUSTRY

v.

THE COLLECTOR OF CENTRAL EXCISE, CALCUTTA

AUGUST 27, 1997

B [SUHAS C. SEN AND K.T. THOMAS, JJ.]

Central Excise Rules, 1944/Central Excise Tariff :

Rule 173 Q/Tariff Items 26 A(ia), 27(a)(ii) and 68—Classification of C *goods—Railway Overhead Equipment and fittings for Electric Traction—Manufacture comprising of Casting of molten metal into moulds as per specifications of Railways and included post casting operations also—Admitted by a statement made to this effect by a Director of Company—Tribunal's finding that goods manufactured are classifiable under Tariff Item 68—Finding of Tribunal calling for no interference as being* D *essentially finding of fact based on evidence.*

The railway overhead equipments and fittings for electric traction manufactured by the appellant was classified under Item 68 and not as castings held by the Central Excise and Gold (Control) Appellate Tribunal E **(CEGAT). During the period 1979-80 to 1982-83, Notification No. 89/79 dated 1.3.79 and Notification No. 105/80 dated 19.6.80 granted exemption to such articles upto the value of Rs. 30 lakhs in the current financial year if the value of clearances during the preceding financial year did not exceed to Rs. 30 lakhs. The Department had on the basis of intelligence report** F **that the assessee was removing the goods without payment of duty, had ascertained the value of clearances of these goods for the period 1979-80 to 1982-83 in the light of Notification No. 87/79 dated 1.3.79 and Notification No. 105/80 dated 19.6.80 and had held demand of duty of a sum of Rs.4,29,660.20 P. and also imposed penalty of a sum of Rs. one lakh under Section 173 Q of the Central Rules, 1944 on the basis that the value of** G **clearances during the period 1981-82 and 1982-83 exceeded the limit of Rs. 30 lakhs. The Tribunal, on appeal had upheld the order of the Collector in so far as the quantum of demand was concerned but had reduced the quantum of penalty to Rs. 25,000. The Tribunal agreeing with the appellant regarding double computation of value or raw materials, asked the Collec-** H **tor to verify this factual aspect on the basis of evidence of be produced by**

the appellant, and thereafter decide whether the duty demanded would need any modification. It was contended by the appellant that the castings made out of aluminium and copper supplied by the Railways remained castings even after the same was returned to the Railway after carrying out the manufacturing operations. It was submitted that what was received from railways was casting in crude form which was then processed by the appellant. What was done according to the appellants was that copper, aluminium and tin were melted and cast into moulds according to the specifications of the Railways and that what was returned to the Railways was only castings converted into identifiable shapes.

Dismissing the appeal, the Court

HELD : The finding of the Tribunal that the goods are classifiable under Item 68 is a finding of fact based on evidence and therefore does not warrant any interference.

That the appellant after the casting was done, carried out post-casting operations such as fettling, grinding, dressing, machining and assembling with fasteners, stood further corroborated by the statement made by the Director of Company to this effect. [528-B]

Vasantham Foundry v. *Union of India & Ors.*, **[1995] 5 SCC 289, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1953 of 1990.

From the Judgment and Order dated 29.12.89 of the Customs Excise and Gold (Control) Appellant Tribunal, New Delhi in A. No. E/2586/89-BI (Order No. 1 of 1990-BI).

Ananat Haksar, K.K. Lahiri and Ejaz Maqbool for the Appellant.

K.N. Bhatt, Additional Solicitor General, Ms. Survira Lal and P. Parmeshwaran, (N.P) for the Respondent.

The Judgment of the Court was delivered by

SEN, J. The facts of this case have been summarised by Customs,

A Excise & Gold (Control) Appellate Tribunal (CEGAT). The appellant-Company manufactures railway overhead equipment and fittings for electric traction falling under Item 68 of the Central Excise Tariff. According to the Department, the Central Excise Officers visited their factory on 1.8.1983 on the basis of intelligence report that the appellants are manufac-
B turing railway overhead equipment and fittings and were removing the same without payment of duty and demanded the records and documents relating to the manufacture, terms and conditions of supplying the material to the railways. Shri Milan Pakhira, Director of the Company gave a statement on that day saying *inter alia* that they were supplying overhead equipment and fittings for electric traction out of raw material purchased
C from outside and the goods were directly supplied to the railways. The Company undertook fabrication of such fittings for railway electrification contractors on charging them fabrication charges where the contracts themselves supply the raw material. He also said the process undertaken by them was melting of copper aluminium and tin and the molten metal
D was cast in to moulds as per railway specification and that the material after casting was further subjected to operations such as fettling, grinding, dressing, machining, assembling wherever necessary with fasteners. The Department, thereafter, ascertained the value of clearances of these goods for the past period 1979-80 to 1982-83 in the light of Notification No. 89/79 dated 1.3.1979 and Notification No. 105/80 dated 19.6.1980 which granted
E exemption to such articles upto Rs. 30 lakhs in the current financial year if the value of clearances during the preceding financial year did not exceed Rs. 30 lakhs. It was found that on this basis, there had been less than Rs. 30 lakhs clearances in 1980-81 and that the clearance during 1981-82 was Rs. 41,64,574.43 making for liability to pay duty on the amount in excess of
F Rs. 30 lakhs and also that their clearances of value of Rs. 42,06,178 during 1982-83 had to pay duty without any exemption as the clearances during preceding financial year 1981-82 had exceeded Rs. 30 lakhs. A show cause notice was accordingly issued on 2.12.1986 and after considering their reply thereto and hearing them in the matter, the Collector of Central Excise, Calcutta-I upheld the demand of duty in the sum of Rs. 4,29,660.20p and
G also imposed penalty in the sum of Rupees One lakh under Rule 173Q of Central Excise Rules, 1944.

The appellant-Company went up in appeal to the Tribunal. The Tribunal upheld the order of the Collector but insofar as the quantum of
H demand was concerned while agreeing with the contention of the appel-

lant-Company regarding double computation of value of raw materials, asked the Collector to verify this factual aspect on the basis of evidence to be produced by the appellant and, therefore, decide whether the duty demanded would need modification. The Appellate Tribunal also reduced the quantum of penalty to Rs. 25,000. A

At the material time, Tariff Items 26A (1a), 27(a)(ii) and 68 stood as under : B

"26A. COPPER AND COPPER ALLOYS CONTAINING NOT LESS THAN FIFTY PER CENT BY WEIGHT OF COPPER.

(1) xxx xxx xxx C

(ia) wire bars, wire rods and castings, not otherwise specified.

27. ALUMINIUM -

(a) (i) xxx xxx xxx D

(ii) wire bars, wire rods and castings, not otherwise specified.

68. ALL OTHER GOODS, NOT ELSEWHERE SPECIFIED, BUT EXCLUDING - E

...."

On behalf of the appellant-Company, it has been argued that castings made out of aluminium and copper remain castings even after they received the same from the railways and returned it to them. What was received from the railways was casting in crude form. What is returned is casting converted into an identifiable shape. It was contended that the process undertaken by the appellant was to melt copper, aluminium and tin according to the specifications of the railways. Melted metal was cast into moulds and the material after casting was sold to the railways. Reliance was placed on behalf of the appellant on a decision of this Court in *Vasantham Foundry* v. *Union of India and Others,* [1995] 5 SCC 289 where it was held that iron castings in its solid form must be treated as "cast iron" for the purpose of Section 14(iv) of the Central Sales Tax Act. It was further held that "cast iron casting" in its basic or rough form be held to be "cast iron". But if thereafter any machining or polishing or any F G H

A other process was done to the rough cast iron casting to produce something else, these could not be treated as cast iron castings in its primary or rough form.

In the instant case, the finding of fact is that the appellant after casting was done, carried out various post-casting operations such as B fettling, grinding, dressing, machining and assembling with fasteners. This finding is corroborated by the statement of the Director of the Company. On these facts, the CEGAT dismissed the appeal of the appellant holding the the goods manufactured by the appellant could not be classified as "castings" and, therefore, had to be taxed under Tariff Item 68.

C

The findings made by the Tribunal are essentially findings of facts. They are based on evidence and cannot be regarded as perverse. In that view of the matter, the appeal is dismissed. There will be no order as to costs.

R.D. Appeal dismissed.