

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/726 /1990

Date 07/11/2007

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
BCL FORGINGS LTD.
67,MIDC INDUSTRIAL ESTATE SATPUR NASIK
422002

BCL FORGINGS LTD.

Appellant

C.C.E.AURANGABA

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 551/07-EX dated 15-10-07 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E.AURANGABA

MEHAR BUILDING DADY SHETH LANE BOMBAY

400007

2. Adv. / Consult SH. A. B. NAWAL, CON.

203, ROHAN HEIGHTS, D'SOUZA COLONY,
OTT COLLEGE ROAD, NASHIK-422005

3. S.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(Excise Appeal Branch)

Final Order No.551/2007 EX

Per S.S. Kang:-

Heard both sides. The appellants filed this appeal against the impugned order whereby the goods manufactured by the appellants were held to be classifiable under heading 87.08 and 84.03 as parts of the Automobiles.

2. The contention of appellant is that the goods in question are forgings and are classifiable under Chapter 7326.19 and entitled for the benefit of Notification No. 223/88 dated 23.6.1988.

3. The contention of appellant is that the goods in question are only forgings and forged products of steel and they are not identifiable as parts of automobiles. The appellants are only undertaking the process of forging and only removes the excess material by way of trimming. The contention is that these forgings are cleared to various customers who undertake the process of turning, milling, drilling, grooving on the goods cleared by the appellants. After doing these processes, the identifiable parts of automobiles come into existence. As the forgings cleared by the appellants are not used as such and the customers undertake further processes, therefore, the same cannot be held to be parts of Automobile. The contention is that revenue is classifying goods in

question as parts of motor vehicles on the ground that these forgings have attained the shape and outline of finished article classifiable under Chapter heading 84 and 87 of the Central Excise Tariff. The appellant relied on the decision of Hon'ble Supreme Court in the case of CCE Vs Jaypee Forges reported in 2003 (158) ELT 560). The appellants also relied upon the following decisions of the Tribunal:-

Neco Castings Ltd Vs CCE Nagpur
[2002 (150) ELT 117 SC]

Shivaji Wroks Ltd Vs CCE Aurangabad
[1994 (69) ELT 674]

Sharda forgings & Stampaings (P) Ltd Vs CCE Ghaziabad
[2004 (166) ELT 357].

The appellants also relied upon the provisions of Notification No 223/88. The contention is that as per the notification, the forgings classifiable under Chapter 73 are liable for concessional rate of duty if the forgings have not been subjected to any machining or surface treatment other than removal of surface defects by grinding, chipping, or proof machining provided that in both the cases, there is no change in the form of the product. The contention is that in these circumstances, the goods in question are classifiable under Chapter 73 of the Central Excise Tariff and entitled for the benefit of Notification.

4. The contention of revenue is that the goods in question attain the approximate shape and outline of the parts of the automobile and therefore, are classifiable as automobile parts. The revenue also relied upon the Tribunal decision in the case of Bharat Heavy Electricals Ltd Vs CC, Madras reported in 1987 (28) ELT 545. The learned SDR also relied upon Rule 2(a) of Interpretation Rules to submit that the goods in question are parts of automobile. The contention of revenue is also that the goods cleared by the appellants are having specific part numbers, therefore, the same are classifiable as parts of automobiles.

5. In reply, the learned Counsel submitted that no doubt part numbers are given to the forgings as these are manufactured as per the design provided by their customers but these are not same parts numbers, which were given to the parts manufactured out of these forgings. The part numbers are only given to identify the forgings as per the drawings submitted by the customers.

6. In this case, the only issue is that the product manufactured and cleared by the appellants is classifiable as forgings or as parts of automobiles.

7. The admitted facts of the case are that the appellants are only removing the extra material from the forgings by way of trimming. The customers after receiving the forgings from the appellants,

undertakes the other machining operations such as turning, drilling, boring and grooving. We find that revenue is relying upon the decision of Bharat Heavy Electricals Ltd (supra). The facts of that case are different. In that case, the goods were imported and machine processes were highly sophisticated and provision for carrying out these operations would not be available with the appellants in India, the same were carried out before export and after import, the importer is only carryout minor operations which are in the nature of fitment operation.

8. In the present case, we find that the appellants are only undertaking the process of removal of excess material from the forgings. The other important operations such as turning, drilling, grinding etc are undertaken by the customers. The Tribunal in the case of Jaypee Forges Vs CCE Mumbai reported in 1996 (83) ELT 49 held that forgings and forged articles of alloy steel after chipping of excess material are classifiable as forging. The revenue filed appeal and the Hon'ble Supreme Court rejected the appeal reported as CCE Vs Jaypee Forges reported in 2003 (158) ELT 560. The Hon'ble Supreme Court has held as under:-

“In this appeal the only issue relates to the correct classification of the products in question which are described as forgings and forged articles of alloy steel by the assessee-respondent. Its claim is that the articles fall under Tariff item 73.26 of the Central Excise Tariff Act, 1985, whereas the claim of

the Department is that it falls under Item No.87.08 as parts of motor vehicles, viz. 'gears and pinions'. The learned members of the Tribunal constituting majority were of the view that the goods in question were unmachined forgings and several processes have to be gone through before the articles were brought to required specifications and dimensions. It was observed thus:

In the present stage, they have just emerged from forging, without acquiring any essential characteristic of a part of a motor vehicle. The Revenue has not placed any evidence that the article has acquired such a shape and there has been further working of such a nature, that it is n longer an article of forging. The photographs of the product have been shown and the same are in the file. The impugned goods are straight from forging without any processes undertaken on it except the chipping of excess material around it."

Having regard to this finding of the majority members of the Tribunal, which appears to be reasonable, it is futile to contend that the goods have to be classified as parts of motor vehicles. This very finding of the Tribunal negatives the scope for any argument based on the 1st part of Rule 2a of Interpretation Rules contained in Central Excise Tariff Act. Therefore, we see no substance in the appeal of the Revenue. In fact, it may be stated that a similar view was taken by the Tribunal in Sikka Heat Treatment Industry Vs Collector of Central Excise, New Delhi reported in 1996 (81) ELT 628 and that order of the Tribunal has been confirmed by this Court vide 1997 (94) ELT 5 (Veekay Industries Vs Collector of Central Excise, New Delhi).

The learned Senior Counsel appearing for the appellant has tried to overcome the above precedent by contending that Rule 2(a) of the Interpretation Rules was not considered by the Tribunal in the aforementioned case; but, as we observed supra, in the light of the findings recorded by the Tribunal there is no scope to invoke the Rule that is sought to be relied upon. Hence the appeal is dismissed. No costs."

9. Further we find that Notification No. 223/88 provides concessional rate of duty to the forgings and forged articles of steel provided that forgings are not subject to any machining or surface

● treatment other than removal of surface treatments of excess material.

10. In the present case, the admitted facts are that the appellants are only undertaking the process of removal of extra material by way of trimming, therefore, we find that the goods are classifiable under Chapter 73 of the Tariff. The impugned order is set aside and the appeal is allowed.

(Order dictated and pronounced in the open Court.)

(P. Karthikeyan)
Member(Tech)
MPS

(S.S. Kang)
Vice President