

PETITIONER:
M/S. EASTERN DIECASTING INDUSTRY PVT. LTD.

Vs.

RESPONDENT:
THE COLLECTOR OF CENTRAL EXCISE, CALCUTTA

DATE OF JUDGMENT: 27/08/1997

BENCH:
SUHAS C. SEN, K. T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T

SEN, J.

The facts of this case have been summarised by Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT). The appellant-company manufactures railway overhead equipment and fitting 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 manufacturing 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 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 contractors themselves supply the raw material. He also said the process undertaken by them was melting of copper aluminium and tin and the molten metal 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 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.41,64,574.43p. making for liability to pay duty on the amount in excess of 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 upheld the demand of duty in the sum of Rs. 4,29,660.2.p. and also imposed penalty in the sum of Rupees one Lakh Under rule 1730 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 demand was concerned while agreeing with the contention of the appellant-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, thereafter, decide whether the duty demanded would need modification. The Appellate Tribunal also reduced the quantum of penalty to Rs.25,000/-.

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

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

(1) x x x x

(1a) Wire bars, wire rods and
castings, not otherwise specified.

27. ALUMINIUM -

(a)(i) x x x x

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

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

.....
....."

On behalf of the appellant - Company, it has been argued that castings made out of aluminium and copper 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 from. 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 melt copper, aluminium and tin according to the specification of the railway. Melted metal was cast into moulds and the material after casting was sold to the railway. Reliance was placed on behalf of the appellant on a decision of this Court in Vasantham Foundry v. Union of India and Other, (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 must be held to be "cast iron". But if thereafter any machining or polishing or any 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 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 could not be classified as "castings" and, therefore, had to be taxed under Tariff Item 68.

The findings made by the Tribunal are essentially findings of fact. of fact. 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.

JUDIS