

Multimetals Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-09-1983

Reported in : (1983)LC377DTri(Delhi)

Appellant : Multimetals Ltd.

Respondent : Collector of Central Excise

Judgement :

2. The appellants stated at the outset that they had withdrawn their writ petition from the Supreme Court on 17-1-1983 and that the Tribunal was now free to decide the case on merits.

3. The dispute in this case pertains to interpretation of exemption notification No. 213/63-Central Excises, as amended by notification No.29/67-C.E. To facilitate a proper understanding of the issues involved, we reproduce below this notification, together with its amendment :- Notification No. 213/63-C.E., as amended by notification No. 29/67-C.E. "In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts pipes and tubes of copper alloys, falling under sub-item (3) of Item No. 26A of the First Schedule to Central Excises and Salt Act 1944 (1 of 1944) in the manufacture of which duty paid copper or copper alloy in any crude form or manufactures thereof are used, from so much of the duty of excise leviable thereon, as is equivalent to the duty already paid under sub-item (1) and/or (2) of the said item on copper or copper alloys in any crude form or manufactures thereof.

Notwithstanding anything contained in the foregoing paragraph, such pipes and tubes of copper and copper alloys manufactured from copper or copper alloys in any crude form purchased from the market on or after the 20th day of August, 1966, shall be exempt from so much of the duty of excise leviable thereon as is equivalent to the duty payable on the copper or copper alloys in any crude form, as the case may be." Duty on crude copper and copper alloys was raised from Rs. 1,500/- per MT to Rs. 4,000/- per MT with effect from 1-8-1974. The appellants submitted a classification list on 17-8-1974 which was approved by the Assistant Collector. This classification list contains an endorsement in the following terms :- In the case of imported copper which has borne countervailing duty at Rs. 1500/- per M.T. under Customs notification No. 64/74, dated 1-8-74 and which is used in the manufacture of pipes and tubes set-off to the extent of Rs. 1500/-per M.T. only is allowed. There however such pipes and tubes are manufactured from copper and copper alloy in any crude form lying in stock with manufacturer on 1-8-74 or purchased from the market, set-off admissible will be to the extent of Rs. 4000/- per M.T." The appellants' case, in short, is that set-off of crude copper stage duty became payable to them at the revised rate of Rs. 4,000/- per M.T. with effect from 1-8-74. To be precise the material period of dispute can be split up into two parts as under :- During this period, set-off was granted to them initially at the old rate of Rs. 1500/- per M.T. Later, however, the Assistant Collector granted them refund on 17-7-76 for the balance set-off at the rate of Rs. 2500/- per M.T. But soon this was followed by a notice served on them on 26-10-76 asking them to show cause why the amount of refund paid to them be not recovered.

During this period set-off was granted to the appellants at the enhanced rate of Rs. 4000/- per M.T. initially itself.

4. Shri Jain argued on behalf of the appellants that the words "duty payable" in second paragraph of the exemption notification clearly referred to duty that is payable, that there was no scope for adding or modifying any words in the notification, that there was no warrant for interpreting "duty payable" to mean duty that was payable on the date of purchase of the crude copper in question as the Department had done, that it was practically difficult for the appellants to find out as to what duty had been paid on the crude copper which they had purchased

from the market, that the demand raised by the Department for the second period (18-11-74 to 31-1-75) was time-barred, it having been made on 26-10-76, that is, after the expiry of one year's time-limit laid down in Rule 10 read with Rule 173J, that though the demand in respect of the first period was within time but proceedings for recovery of this demand could not be continued after the old Rule 10 was substituted by a new rule on 6-8-77 and there was no saving clause inserted in the rules to continue the proceedings initiated under the old rule, that Section 6 of the General Clauses Act applied only to Acts of Parliament and not to rules framed by the Central Government (AIR 1970 SC 494), that after the Assistant Collector had approved grant of set-off at increased rate in the classification list, it was wrong for the Superintendent, a junior functionary, to issue a show cause notice for withdrawing that set-off, that after having approved the classification list, the Assistant Collector could not review his own order by confirming demand for recovery and that if at all there was any doubt about interpretation, the benefit of the same ought to be given to the appellants.

5. On behalf of the Department, Shri N.V. Raghavan Iyer stated that "duty payable" in the context of market purchases of crude copper means duty that was payable on the date of purchase, that this was the only reasonable meaning and if it became necessary to depart from the rules of grammar to get at a reasonable meaning, it could be done so, that what happened on 6-8-77 was that the old Rule 10 was modified, that such modification did not amount to repeal of the rule, that Rule 10-both old and new empowered the proper officer to issue a demand notice for the duty short-levied or erroneously refunded, that the Superintendent was a proper officer who could issue such a notice directing the assessee to show cause to the Assistant Collector, that approval of classification list by the Assistant Collector did not amount to passing of quasi-judicial orders so as to require a review by the Collector in case the Assistant Collector happened to make a mistake and that in respect of the second period, the impugned Order-in-Appeal had only remanded the matter to the Assistant Collector to decide on the question of time-bar.

6. We have given our earnest consideration to the matter. It is evident that the use of two different types of phraseology in the first and second paragraphs of the

notification-"duty already paid" in the first paragraph and "duty payable" in the second paragraph-created two distinct schemes of set off towards crude copper stage duty. "Duty payable" could not be equated to "duty already paid" for another reason too; for, if this were so, the second paragraph of the notification would be quite unnecessary. There is no doubt in our mind that paragraph 2 of the notification was included for a definite purpose which, quite evidently, was to solve the problem of ascertaining the amount of duty actually paid on crude copper purchased from the market.

The next question, which is also the real point of dispute in respect of the second paragraph, is : duty payable on which date-whether on the date of purchase of crude copper from the market, as interpreted by the Department, or on the date of grant of set off in terms of the notification, as urged by the appellants. In our view, the answer to this question has to be sought in the context of the time at which the notification has to be applied. According to the Central Excise law, the occasion to apply the exemption notification is the time when excisable goods are sought to be cleared and, therefore, duty is to be assessed and paid thereon. In the case under consideration before us, the occasion to apply notification No. 213/63-C.E. would also arise only when copper pipes and tubes are to be assessed for clearance and it is at that time only that the question of granting exemption to the extent of crude copper stage duty arises. When the person concerned with applying the notification at that time reads the notification, he is bound to interpret the exemption "equivalent to the duty payable on the copper in any crude form, . ." as meaning exemption equivalent to the "duty payable" on the crude copper as at that time, that is, at the time of applying the exemption or set off. There can be no occasion to read and apply the notification at the time of purchase of crude copper from the market. We, therefore, do not see how the words "duty payable" in the second paragraph can mean the duty payable on crude copper at the time of its purchase from the market. There is yet another reason why "duty payable" should not be related to the date of purchase of the crude copper. Doing so would revive to some extent the very same practical difficulty of ascertaining the past history of the crude copper used which the second paragraph of the notification sought to by-pass. If, in a given consignment of copper pipes and tubes, crude copper purchased on two or three different dates happens to be used and the rate of duty

prevalent on these dates was different, it would become extremely difficult to decide as to at what rate the exemption or set off envisaged in the notification should be given towards the crude copper stage duty. In any case, when the second paragraph of the notification does not specifically lay down as to on what date the "duty payable" is to form the basis of set off and two interpretations about the relevant date are possible, one held by the Department and the other urged by the assessee-there is no reason why, in this matter of Central excise tax, the interpretation favourable to the assessee should not be adopted. We, therefore, hold that "duty payable" in the second paragraph of the notification refers to the duty payable on the date of grant of the exemption or set off when the copper pipes and tubes were to be assessed to excise duty prior to their clearance for home consumption. In view of this finding, it is unnecessary for us to go into other arguments of the appellants.

7. We allow this appeal accordingly with consequential relief to the appellants.

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