Collector of Central Excise Vs. Poysha Indl. Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-11-1996

Reported in : (1997)(93)ELT445TriDel

Appellant : Collector of Central Excise

Respondent : Poysha Indl. Co. Ltd.

Judgement :

1. This is an appeal against the order-in-appeal passed by the Collector of Central Excise (Appeals), Ghaziabad, dated 22-11-1994. A notice for hearing was duly issued to the Respondent but neither any appearance was caused nor there was any other communication requesting for adjournment or otherwise. Hence, we perused the records and heard the Ld. D.R.2. Ld. D.R. stated that in this case the respondents were clearing T.P.strips of width 3" and above as waste and scrap and paying duty accordingly. But on enquiry it was found that the respondents sells these tin cuttings to small traders who manufacture sieves, buttons, toys, kajal ki dibbi etc. Therefore, the department considered that the goods cleared were actually small sheets/cut pieces which could not be treated as waste and scrap. The A.C. heard the matter and taking into account Section Note 6(a) of Section XV governing the Chapter 72 observed that the cuttings and trimmings in question could not be considered waste and scrap. In this connection he also referred to the Board's circular No. 6/88, dated 1-3-1988 towards which his attention had been drawn. The respondents had in their defence cited Order-in-Appeal No. 704/93, dated 30-11-1993 passed by Collector (Appeals) in their case

but the A.C. found that it was distinguishable; hence he confirmed the demand.

3. The Collector (Appeals), however allowed the appeal observing that the ratio of his Order-in-Appeal No. 704/93 in the case of the same factory applied to the present case.

4. Ld. DR further stated that the main issue involved in this case is as to whether the goods in question were classifiable as 'waste and scrap' under Heading 72.04 or as cuttings of tin plates under heading 72.12 of the tariff. He stated that as per the meaning assigned to the expression 'waste and scrap ' in Section note 6 of Section XV only such waste and scrap from the manufacture or mechanical working of metals, and metal goads definitely not usable as such because of breakage, cutting up, wear or other reasons is covered by definition 'waste and scrap'.

5. Since in the present case the material was being used for manufacture of buttons and toys etc., therefore, the A.C. had rightly held that it was not waste and scarp and could not only be considered as cuttings of tin and tin plates.

6. We have considered the above submissions. We observe that the Section Note 6 cited by the ld. D.R. and relied upon by the A.C., there are two Sub-clauses - 1. 'Metal waste and scrap from the manufacture or mechanical working of metals' 2. 'Metal goods definitely not usable as such because of breakage, cutting-up wear or other reasons'. Therefore, the words 'definitely not usable as such' qualify the word 'metal goods' and the word 'goods' here has been used in the sense of articles made of metal. In the case of the first sub-clause there is no such qualifying expression. Therefore, metal waste and scrap from the manufacture or mechanical working of metals would have to be treated as waste and scrap for the purposes of this section. The AC's mention of a board's circular referring to cuttings and trimmings etc. fit only for recovery of metals or for use in the manufacture of chemicals was no longer relevant for the purposes of new tariff since no such condition or qualification has been provided under Section note 6 of Section XV.7. The very fact that waste and scrap is also deemed to be goods of commercial value which is purchased and sold in the normal course as a commodity in the market indicates that it has some use and some value.

Therefore merely because it could find some use it could not be said that material will come out of the definition of waste and scrap.

8. Secondly, the process of manufacture of items like sieves, buttons, toys and kajal ki dibbi etc. would also involve subjecting these trimmings and cuttings to some process and this aspect has not been examined at all.

9. That the material in question arises during the course of manufacture of mechanical working of metals has not been denied.

10. The copy of the Order-in-Appeal which the Collector (Appeals) has taken into account has not been filed before us nor a copy of the statement of the partner of the firm or the purchasers of this material is before us. The respondents have also not filed any material before us. The manufacturer has also not responded to the notice.

11. It is, however, clear that the old definition of waste and scrap referred to in the Board's circular 6/88, dated 1-3-1988 could not be applied and the definition in Section note 6(a) of Section XV during the relevant period was required to be interpreted in the light of our above observations and then applied to the facts of the case.

12. The Collector (Appeals) has not passed speaking order and merely referred to his previous order which has not been enclosed. In the circumstances, we are constrained to set aside the impugned order and remand the matter back to the Assistant Collector for de-novo consideration in the light of above observations and findings.