**Finolex Cables Ltd. Vs. Commissioner of C. Ex. and Cus.**

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**SooperKanoon Citation** : sooperkanoon.com/10295

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Oct-30-1996

**Reported in** : (1998)(100)ELT517Tri(Mum.)bai

**Appellant** : Finolex Cables Ltd.

**Respondent** : Commissioner of C. Ex. and Cus.

**Judgement** :

1. The appellants are aggrieved by the order dated 27-3-1996 passed by the Commissioner of Central Excise (Appeals), Pune. Facts, briefly, are that the appellants manufacture a type of wires and cables called jelly-filled telecommunication wires. The jurisdictional Assistant Commissioner of Central Excise, Pune Division I by his order dated 28-3-1995 held that waste and scrap of these wires is classifiable under sub-heading 8544.00 of the Central Excise Tariff Act, 1985 as wires and cables and confirmed the duty demand of Rs. 1,41,05,507.37.

The Assistant Commissioner held that the waste and scrap are bought and sold, they have emerged as a result of a manufacturing process and are classifiable under Chapter 85 of CETA along with full JFTC cables or on the basis of the predominant metal contained in the cable (copper or aluminium) under Chapter 74 or 76. The Assistant Commissioner in his order adopted classification under sub-heading 8544.00 of the CETA. The Commissioner (Appeals) however while upholding the Assistant Commissioner's order that the waste and scrap were excisable goods, held that they are more appropriately to be classified on the basis of the metal content as scrap falling under Chapters 74 or 76 for such scrap of copper or aluminium, and the Commissioner (Appeals) ordered recalculation of the demand on that basis.

2. Shri B.N. Rangwani, the ld. Consultant initially referred to their miscellaneous application on certain minor discrepancies in the interim order passed in their case but both parties argued that they are not material now that the main appeal itself has been taken up for hearing.

It was urged by the ld. Consultant on the merits of the case, that the appellants have two units manufacturing wires and cables at Pimpri and Urse. In the case of the Pimpri unit the same issue had been raised by the department earlier for demanding duty on scrap and waste of wries and cables and the order of Collector (Appeals) dated 11-3-1992 was in appellants favour holding such scrap to be non-excisable goods. The Tribunal upheld the order as reported in 1995 (9) 19. Thereafter, the scrap and waste from Pimpri unit is allowed clearance duty free. The present dispute on the same issue relating to Urse unit. The ld.Consultant contended that the Commissioner (Appeals) has not followed the precedent Tribunal decision on the ground that that order was passed sub silentio without considering the contention of the Department for classification of the scrap based on copper/aluminium content under relevant tariff item for the scrap of waste thereof. But it was pointed out that the Tribunal has noted the contention and had found that the goods are not excisable goods and hence the question of their classification under CETA would not arise. Ld. Consultant urged that judicial propriety demands that the order passed by appellate forum be followed and implemented and cited the Supreme Court decision in Union of India v. Kamalakshi Finance Corporation - 1995 (55) E.L.T.433 in this regard. It was further submitted that the Tribunal decision above in their case has been followed by the Tribunal in the case of Hitech Cable & Paramount Cable Corporation v. C.C.E.3. Shri Gurdeep Singh, the ld D.R. contended the Tribunal decision in the appellants case was limited to whether the waste and scrap is classifiable under Heading 85.44 only and it was held in the negative in the absence of specific entry thereunder for scrap. It did not address itself to the question of classification of the waste and scrap on the basis of the metal content as such waste and scrap under

Chapters 74 and 76 of CETA relevant for such metals in which there are headings specifically covering scrap and waste. Ld DR also relied upon Interpretative Rule 3(b) to the Tariff which provides in the case of mixtures of articles, classification, to be based on that portion which imparts essential characteristic to the goods.

4. The submissions made by both the sides have been considered. The issue is whether waste and scrap of electric wires and cables namely jelly filled telecommunication cables is exigible to duty, and if so, its classification under the Central Excise Tariff Act, 1985. The guidelines for determining exigibility of waste and scrap have been laid down in the Delhi High Court's decision in the case of Modi Rubber Ltd. v. U.O.I. - 1987 (29) E.L.T. 502. The High Court observed "By virtue of definition of Section 2(d) excisable goods means goods specified in the First Schedule as being subject to duty of excise.

Knowledge must be attributed to the legislature that in the process of manufacture, certain waste is generated or comes into existence and certain goods can be found unfit for consumption or for marketing.

Waste is generated in relation to the manufacture of man-made fibres.

In Tariff Item No. 18, an entry has been provided by giving the description of the goods as IV "Non cellulosic waste, all sorts" on which a rate of duty has been prescribed. An explanation is given that this item includes only wastes arising in, or in relation to, the manufacture of man-made fibres (other than mineral fibres) and man-made filament yarns. Under Tariff Item 15A, the description of the goods is "Artificial or synthetic resins and plastic materials; and other materials and articles specified them". The "waste and scrap" is specifically mentioned under Item (C) of Explanation III. If the intention of the legislature is to cover "waste and scrap" arising in or in relation to the manufacture, then it has been specifically provided in the Tariff Items". The Tribunal has followed this Delhi High Court decision in the case of this very appellant - 1995 (9) RLT 19 to hold that under the tariff heading for wires and cables no specific entry for waste and scrap has been provided for, and that hence such waste and scrap is not excisable goods. The Tribunal in giving that decision was complying with the direction of the Bombay High Court to the Tribunal to decide inter alia "whether item of waste and scrap of wires and cables is excisable? Whether the said item is classifiable under Tariff Item No. 8544 of the Central Excise Tariff".

Having found such scrap was not excisable goods, the Tribunal concluded, "the question of their classification under CETA, 1985 does not arise." Having come to such a finding that the scrap of wires and cables was not excisable goods under the Central Excise Tariff Act, 1985, it would logically follow that the same will be the result for considering classification under items other than those under Chapter 85 CETA. In such a view of the matter, the Commissioner (Appeals) observation that the Tribunal decision has no precedent value, having been passed sub silentio, is not well founded. The argument was made before the Tribunal that the waste and scrap of wires and cables would be classifiable as waste and scrap on the basis of metal conductors therein, and the Tribunal findings would cover such contention also, as noted above.

5. Moreover, classification for assessment purposes is on the basis of the form in which the goods are presented for assessment. The Tribunal's order (supra) shows that the scrap of cables constituted of unserviceable pieces in the form of a mass of metal and insulating material, and, in that form the goods do not answer the description of scrap under Chapter 74 or 76 CETA. In the present case also it is in similar form. This aspect was noted in the Tribunal decision in the case of 1996 (13) RLT 119 - C.C.E. v. Hitech Cable & Paramount Cable Corporation In that decision, while following the Finolex decision (supra) as a precedent, to hold scrap of wires and cables are not excisable goods, the Tribunal observed, that marketable short length of cables are not to be confused with the cable waste learned or presented for clearance as such and disposed of as waste. It is further noted that this decision was given in the face of the contention of revenue that a waste is either waste of cable or a waste of PVC or a combination of both and that hence the predominance test has to be applied for classification applying Rule 2(b) and 3(b) of the Interpretative Rules for the CETA.6. We also find that an appeal against the Tribunal decision in the case of Hitech Cable & Paramount Corporation (supra) filed by the Department has been reportedly dismissed by the Supreme Court 1996 (87) E.L.T. A131.

7. In the result, it is held that the waste and scrap of jelly-filled telecommunication cables in this case are not excisable goods, following the two decisions of the Tribunal cited above.