

Collector of Central Excise Vs. Electro Steel Casting Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-07-1997

Reported in : (1999)(114)ELT243TriDel

Appellant : Collector of Central Excise

Respondent : Electro Steel Casting Ltd.

Judgement :

1. This is an appeal filed by the Revenue being aggrieved with the Order-in-Appeal dated 30-10-1987 passed by the Collector of Central Excise (Appeals), New Delhi who had set aside the Order-in-Original dated 9-1-1987 passed by the Assistant Collector of Central Excise, Ghaziabad. The matter relates to the availment of deemed credit in respect of iron and steel in terms of Ministry's order dated 7-4-1986 issued from F.No. B-22/5/86-TRU. The respondents had procured old and used scrap of iron and steel from the open market and the adjudicating authority observed that the inquiries regarding the varieties of scrap had revealed that the unit was purchasing from the open market the scrap consisting of cycle parts, agricultural implements, old house-hold utensils like bucket, pitcher and other like items. Such items are not charged to duty. He also mentioned in his order that the goods procured by them were in rusty and dusty condition.

2. Before the Collector of Central Excise (Appeals) among other grounds the appellants submitted for that waste and scrap of steel purchased from the open market comprises of various old and used items of steel.

The composition of the said old and used items of steel which is a scrap can never be clearly recognisable as being non-duty paid. The interpretation as sought to be given by the Assistant Collector of the Central Excise defeats the very object and purpose of the order and/or directions of the Government dated 7-4-1986. The Collector of Central Excise (Appeals) had observed that the reference to the nature of the scrap was not relevant in the absence of any definition of waste and scrap in Notification No. 177/86-C.E., dated 1-3-1986 or in the direction dated 7-4-1986. In appeal before us the Revenue had stated that the deemed credit facility was not available on the old and used scrap of iron and steel purchased from the market in rusty and dusty condition. In ground No. 3 in the grounds of appeal, the Revenue had mentioned that the officers from the Department who visited the factory on a clear examination have come to know that the iron and steel scrap which was lying in the factory mostly consisted of broken pieces of agricultural implements, old and used utensils, old cut cycles parts, broken containers of V.P. and pan masala and other broken articles and pieces thrown away from the houses when no more of use.

3. We have heard Shri M. Jayaraman, JDR for the Revenue and Shri N. R.Khaitan, Advocate for the respondents.

4. Shri M. Jayaraman, JDR submitted that the scrap was clearly recognisable as non duty paid or charged to nil rate of duty. He referred to exemption Notification No. 54/86-C.E. under which waste and scrap other than mill scale had been exempted from the whole of the duty subject to certain conditions. He submitted that the goods have been described in the adjudication order and no excise duty was payable on such used rusty and dusty scrap articles.

5. Shri N.R. Khaitan, Id. Advocate stated that scrap purchased by them from the open market consisted of turning and borings mild steel skull, mild heavy and cuttings of structural heavy machinery parts, Kabari scrap, manganese plate, cast iron and steel bones and chips and weapon cutting. He submitted that the nature of the scrap purchased by them from the market had been disclosed to the jurisdictional officers and that their case was covered by the Ministry's order dated 7-4-1986 with regard to the deemed credit in respect of iron and steel. He filed the

copies of the invoice raised by the suppliers of the scrap and specifically referred that some of the scrap was in the nature of mild steel skull which arise in the manufacture of ingots. He pleaded for rejection of the Revenue's appeal.

6. We have carefully considered the matter. In the show cause notice dated 22-9-1986, it was alleged that the deemed Modvat credit had been taken by M/s. Electro Steel Castings Ltd. on the old and used scrap of iron and steel and that credit had been taken although they had been directed in writing that the Modvat facility was not available on the old and used scrap as the same was clearly recognisable as being non-duty paid. In the adjudication order, it had been clearly mentioned that the scrap in question was in the nature of cycle parts, agricultural implements, old house-hold utensils like bucket, pitcher and other like other old items. In the order dated 7-4-1986 issued from the file No. B 22/5/86-TRU it had been directed under the second provision to Rule 57G(2) of the Central Excise Rules, 1944 that among others the iron and steel and articles thereof which were classifiable under heading numbers as given under Column (3) of the table annexed to that order, purchased from outside and lying in stock on or after 1-3-1986 with the manufacturers manufacturing the final products may be deemed to have paid the specific duty. It was also directed that no such credit shall be allowed if such inputs were clearly recognisable as being non-duty paid or charged to nil rate of duty. The directions had been issued under the second proviso to Rule 57G(2) relating to the Modvat credit.

7. Under Ministry's order F.No. B22/30/86-TRU, dated 29-9-1986 it had been clarified that the waste and scrap of iron and steel like bazar scrap which was clearly recognisable as being non-duty paid or charged to nil rate of duty were not entitled to the deemed credit even during the period prior to 29-9-1986. The Id. Advocate had submitted that the burden was on the Revenue to prove that the inputs received by them were clearly recognisable as being non-duty paid. We find that the inputs as described in the adjudication order were old and used items which are discarded after their use but had a use for some other purpose. Such discarded items are not the product of manufacturing process; they are not excisable. As they are not excisable, the question of any payment of duty will not arise. The provision regarding deemed credit had been issued by the Ministry to

take care of the situations, where although the goods are excisable and dutiable, for various reasons the manufacturer are not in a position to produce proof of payment of duty. The inputs when purchased from the traders may not be accompanied with duty paying document. The directions issued under Rule 57G(2) could not cover such items which are beyond the purview of Central Excise law. Ld. Advocate had submitted that in addition to bazar scrap they had also received turning and borings and the mild steel skull.

8. We find that a similar matter has come up before the Tribunal in the case of Jagat Singh Steel Pvt. Ltd. v. Collector of Central Excise, Chandigarh - 1996 (88) E.L.T. 776 (Tribunal). Paras 5, 6 and 7 from that decision are extracted below : 5. I have carefully considered the matter in the Ministry's order F.No. B-22/5/86-TRU, dated 7-4-1986 [at page T6 of 1986 (25) E.L.T.] issued under the 2nd Proviso to Rule 57G(ii), it was provided that no deemed credit shall be allowed if the inputs are clearly recognisable as being non-duty paid or charged to nil rate of duty.

The 2nd Proviso to Rule 57G(2) of the Central Excise Rules, 1944 (hereinafter referred to as the 'Rules') provided that having regard to the period that has elapsed since the duty of excise was imposed on any inputs, the position of demand and supply of the said inputs in the country and any other relevant considerations, the Central Government may direct that with effect from a specified date, all stocks of the said inputs in the country, except such stocks lying in a factory, customs area (as defined in the Customs Act, 1962 (52 of 1962) or a warehouse as are clearly recognisable as being non-duty paid, may be deemed to be duty paid and credit of duty in respect of the said inputs may be allowed at such rate and subject to such conditions as the Central Government may direct, without production of documents evidencing payment of duty. This order dated 7-4-1986 inter alia provided for deemed credit in respect of the inputs unless it was clearly recognisable as being non-duty paid.

This order was modified in August, 1986 vide order dated 29-8-1986 [refer Vadodara Collectorate Trade Notice No. 214/86, dated 5-9-1986 at page T18 of 1986 (26) E.L.T.] and the facility of deemed credit given in respect of wastes and scrap of steel falling under Heading No. 72.03 was withdrawn. The period involved

in these proceedings is from 13-11-1986 i.e. subsequent to the order dated 29-8-1986 under which the facility of deemed credit in respect of wastes and scrap classifiable under Heading No. 72.03 of the Central Excise Tariff was withdrawn. Under Ministry's Order F.No. B-22/30/86-TRU, dated 29-9-1986, it was clarified that the wastes and scrap of iron and steel like bazar scrap which was clearly recognisable as being non-duty paid or charged to nil rate of duty, were not entitled to the deemed credit even during the period prior to 29-8-1986. It was further clarified that the amending order of 29-8-1986 was issued to deal with the problem of many manufacturers claiming deemed credit even in respect of scraps like bazar scrap (refer Ministry's Order F.No. B-22/30/86-TRU, dated 29-9-1986 at page 7 Annexure C of the paper book). Directions dated 20-10-1987 applied only from 1-4-1987 - the period with which we are not concerned in these proceedings.

In this connection reference may be made to the Tribunal's decision in the case of Sri Krishna Steels v. Collector of Central Excise, 1989 (43) E.L.T. 640 (Tribunal).

6. The goods involved in these proceeds are rolls, cuttings etc.

which were purchased from the market There is a specific allegation in the show cause notice that the inputs received from the market were clearly recognisable as non-duty paid. The waste and scrap during the relevant period was classifiable under Heading 72.03. The waste and scrap was defined as waste and scrap of iron or steel fit only for the recovery of metal or for use in the manufacture of chemicals. It did not include slag, ash and other residues. Waste and scrap was dutiable when it was a manufactured product in a factory. The waste and scrap arising during the process of fabrication of different items in the bazar was not dutiable. The scrap available with kabadies in the bazar could not be considered as a manufactured product and could not be taken to have paid any Central Excise duty.

7. We find that the matter is covered by the Tribunal's Larger Bench decision in the case of Machine Builders and Ors. v. Collector of Central Excise, Bolpur, 1996 (12) RLT 817. These appeals had been referred to the Larger Bench in view of the conflicting decisions of the Tribunal and the Larger Bench referred to above was constituted to hear and dispose of the various appeals. The Tribunal analysed the

various orders of the Government providing for the deemed credit and the various provisions subject to which the deemed credit was available. It was held that the intention was not to deem that inputs which actually did not suffer duty were inputs which suffered duty, and the purpose was to ensure the benefit to those who use inputs in the manufacture of which duty has actually been paid but it might not be possible to produce duty paying documents which will unerringly connect the documents or duty payment with the particular inputs (refer Para 15 of the order). In Para 16 the mischief sought to be avoided by the deemed proviso had been discussed. It was observed that mischief could not have been overcome by stipulating that credit is available even if duty has not been paid on inputs, for that would be against the pivotal element of the scheme. If duty need not be paid and has not been paid, the question of duty paid being earned as credit did not arise. The only way of overcoming the mischief was to dispense with the requirement of documents evidencing the payment of duty. The Tribunal in Para 25 has held that the scrap input was clearly and wholly exempt from duty and the assessee were not entitled to deemed credit. *Jhunjhunwala Steel Works v. Collector of Central Excise, Nagpur - 1997 (89) E.L.T. 787* Tribunal, it had been mentioned that waste and scrap were dutiable only when they were manufactured as a product in a factory and that all waste and scrap available in the market could not be considered as manufactured goods and all the scrap available with the Kabaris could not be considered as manufactured product and could not be taken to have paid any Central Excise duty.

Reference was made to the Larger Bench decision in the case of *Machine Builders v. Collector of Central Excise - 1996 (83) E.L.T. 576* where the Larger Bench of this Tribunal had held that the intention is not to deem that inputs which actually did not suffer duty and that the same were inputs which had suffered so duty and the purpose of the deemed credit scheme was to ensure the benefit to those who used inputs in the manufacture of which duty has actually been paid, but it might not be possible to produce the duty paying documents (refer para 15 of the Larger Bench decision). The Tribunal in para 25 had held that the scrap inputs were clearly and wholly exempted from duty and that the assessee were not entitled to deemed credit.

9. Specific allegation had been made in the show cause notice, that without disclosing the type and character of steel scrap intended to be used the assessee had availed of the benefit of the deemed credit on the old and used scrap of iron and steel purchased from the market, the Modvat credit had been taken wrongly. It is further seen that the Excise officers had physically verified the scrap and had found that the scrap in question was in the nature of used and discarded items of iron and steel.

10. The appellants had contended that in addition to kabaris scrap, wagon cuttings, turnings and borings etc., they had also received mild steel skull. We find that it has also been received from the kabaris and there is no evidence on record that at any stage any Central Excise duty had been paid thereon.

11. Taking all the relevant facts on record into consideration, we do not agree with the view taken by the Id. Collector of Central Excise (Appeals), New Delhi, we set aside the same and as a result the order passed by the Assistant Collector of Central Excise, Ghaziabad is restored. The appeal of Revenue is thus allowed.

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