

Devidayal Rolling Mills Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-06-1997

Reported in : (1997)(94)ELT350TriDel

Appellant : Devidayal Rolling Mills

Respondent : C.C.E.

Judgement :

1. M/s. Devi Dayal Rolling Mills have filed this appeal against the order of Collector (Appeals), Bombay dated 18-8-1987.
2. The issue relates to rate of excise duty on copper waste and scrap and copper wire rods.
3. By classification list No. 8/84-85 filed by the appellants with effect from 1-8-1984 they had classified their products as 'copper wire rods rolled out of casted copper wire bars' under erstwhile Tariff Item 26A(3)(i) and claimed exemption from payment of excise duty under Notification No. 174/84 contending that casted copper wire bars which were manufactured by them from waste and scrap of copper and copper wire rods come under ISI classification sub-heading No. 3.2 as wrought form of copper. Since both the inputs and output fell under the same tariff heading they claimed that no duty was leviable on such copper-rods. By an other C.L. (No. 9/84-85) also with effect from 1-8-1984, they classified their products as "waste or scrap of copper arising during the manufacture of copper wire rods from duty paid copper wire bars" under Tariff Item 26A(2) and claimed exemption under

Notification No. 172/84.

4. By a Show Cause Notice the Department asked the appellants to show cause why exemption claimed under Notifications No. 174/84 and 172/84 should not be denied to them since the exemptions claimed appeared to be inadmissible. As regards classification list No. 8/84-85 the appellants contended that as the inputs, namely, casted copper wire bar and output, namely, copper wire rods both fell under Tariff Item 26A(3)(i), if duty is levied on wire rods it will amount to double taxation. In respect of Classification list No. 9/84-85 they claimed exemption under Notification No. 33/81 and also relied on a Trade Notice issued by the Chandigarh Collectorate No. 23/81 which had clarified that if waste (sheet scrap) was capable of being used as "steel melting scrap" alone and not for other purposes, and where such melting scrap alone was cleared and sold to scrap dealers, the classification thereof would be under Tariff Item 26 and the rate of duty would be effective rate of duty on that item.

5. In the adjudication proceedings the Assistant Collector rejected the appellants claim and confirmed the demand. He observed that Notification No. 174/84 was a conditional Notification providing that the goods should be made from copper and copper products thereof (inputs) on which appropriate amount of duty under Tariff Item 26A should have been paid under Tariff Item 26A and no credit of duty paid on the said inputs had been taken under Rule 56A. Since the copper wire rods were made of copper products, namely, casted copper wire bars, proof of duty having been paid on such casted copper wire bars had to be produced by the assessee. Since no such proof had been produced, the first condition of Notification No. 174/84 had not been satisfied. As regards waste and scrap of copper, the Assistant Collector rejected the appellants' claim for exemption under Notification No. 33/81 as the said Notification was no more in force when the classification list effective from 1-3-1984 was filed and Notification No. 172/84 was operative. Notification No. 172/84 clearly stipulated that duty should have been paid on inputs, namely, copper wire bars. The appellants' contention that there was nothing in Notification No. 172/84 debarring exemption to copper on which duty had already been paid but in respect of which proforma credit under Rule 56A had been taken was rejected by the Assistant Collector as Notification No. 172/84

specifically provided mat inputs should be duty paid.

5. Before the Collector (Appeals) the appellants reiterated their contentions raised before the Assistant Collector. The Collector (Appeals), however, found that the Assistant Collector had correctly held that Notification No. 174/84 was not applicable to copper wire rods rolled out of casted copper wire bars falling under Tariff Item 26A(2). He, also upheld the Assistant Collector's orders denying exemption to the appellants under Notification No. 172/84. Collector (Appeals) therefore agreed with the Asstt. Collector was right in rejecting the present appellants claim for exemption both under Notification Nos. 174/84 and 172/84.

6. Shri Jawahar Lal, Id. Counsel appeared for the appellants and Shri Jayaraman, Ld. JDR appeared on behalf of the Revenue before us.

7. The main submission made on behalf of the appellants relating to Classification List 8/84 is that since inputs, namely, casted copper wire bars which were liable to nil rate of duty in terms of Notification No. 174/84, copper wire rods manufactured from such casted wire bars would also be entitled to the benefit of Notification No.174/84. Ld. counsel contented that the expression 'duty of excise ...

has already been paid' occurring in the proviso to Notification No.174/84 should be given the same meaning as given in some earlier decision of the Tribunal viz., the case of IEL Ltd. v. C.C.E., Bombay reported in 1988 (35) E.L.T. 142 and the Patna High Court decision in Tata Yodogawa Ltd. v. Union of India reported in 1987 (32) E.L.T. 521 wherein it had been held that use of scrap cleared at nil rate of duty did not disentitle the goods from claim of exemption and that "appropriate payment of duty" should be taken to mean duty that ought to have been paid or contracted to have been paid. Since such duty, in terms of exemption Notification No. 174/84 is nil, the goods cleared at nil rate of duty should be taken to be goods on which duty had been paid.

8. Ld. DR on the other hand sought the rejection of the appeal and confirmation of the order of the Collector (Appeals) on the basis of the findings of the lower authorities. Further, Notification No. 172/84 clearly envisaged the production of documents and since no such document had been produced they could not be

claimed the benefit of Notification No. 172/84. He relied on the Tribunal's decision reported in 1987 (30) E.L.T. 578 (Tribunal) and 1984 (18) E.L.T. 319 (Tribunal) in support of his contention.

9. We have considered the rival contentions. On the question of eligibility for Nil rate of duty for copper wire rods rolled out of casted wire bars under Notification No. 174/84 we find that at the relevant time the items were covered under Tariff Item 26A. It is seen from Serial No. 1 of the said Notification that unwrought copper in any form including notched bars, wrought bars and castings not otherwise specified was eligible for Nil rate of duty. This is an instance where the input and output of the process fall under the same sub-item.

Appellants, case is that all exempted goods should be deemed to be goods on which the duty is paid at Nil rate, that being the appropriate rate. Reliance is placed on Bombay Collectorate Trade Notice No. 236/77 which clarified that assessment includes 'Nil' duty assessment and the expression 'paid' has to be construed to mean 'contracted to be paid' and it is not necessary that some amount of duty should have been actually 'paid'. We find force in the appellants' contention. Though the said Trade notice relates to steel melting scrap, we feel that the principle clarified in the Trade Notice viz., assessment includes 'Nil' duty assessment should have been accepted by the Asstt. Collector having regard to the fact that he is subject to the jurisdiction of the same Collectorate.

9A. As regards eligibility for exemption of waste and scrap of copper under Notification 172/84 it is seen that scrap of copper is clearly covered by said notification. It is not in dispute that scrap arises in the process carried out in the factory of the appellants. There is also no dispute about the fact that excise duty has already been paid on the inputs being used in the factory of the appellants. We agree with the appellants' submission that there is nothing in Notification 172/84 to the effect that the benefit of exemption is available only if the duty has already been paid and the duty so paid is not utilised thereafter as provided in Rule 56A. In view of the above discussion we are of the view that the appellants' submissions have merit. We therefore allow the appeal and set aside the impugned order.

