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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-30-1997

Reported in : (1998)(98)ELT558TriDel

Appellant : Durga Industries

Respondent : Collector of Central Excise

Judgement :
1. The captioned appeals pertain to the taking of Modvat credit of Rs. 13,58,554/- for the period October, 1990 to March, 1993 and Rs. 1,60,105/- on 29-5-1993.

2. The facts of the case are that the Appellants are engaged in the manufacture of Aluminium Conductors. They filed a declaration declaring the inputs as well as the final product. The department alleged that the appellants had not declared all aluminium alloys conductors and since the final product was not declared by the appellants, they were not entitled to utilize the Modvat credit taken on the inputs. The lower authorities have considered the various submissions made before them and disallowed the Modvat credit and ordered recovery thereof.

3. Shri R. Nambirajan, ld. Advocate, appearing for the appellants submits that as per note 3(a) of Section XV, alloy of any metal is specified and is understood as that of base metal, which predominates by weight. He submits that in the instant case, the predominence is that in terms of note 3(a), all aluminium alloy conductor is to be treated as an all aluminium conductor. He submits that a reference to the declaration will show that the appellants had described the final product as 'all

aluminium conductor and that this declaration should be read to include all aluminium alloy conductors'. In support of his contention, he cited and relied upon the judgment of this Tribunal in the case of Konark Wires Pvt. Limited under Order No.A/107/Calcutta/93, dated 8-2-1993. The ld. Counsel submits that the appellant had faithfully declared Aluminium Alloy wire as input. He submits that since all aluminium alloy conductor was classifiable under the same heading as of aluminium conductor and, therefore, the description of the final product as AAC should include aluminium alloy conductor. He submits that there cannot be any 'all aluminium alloy conductor'. The ld. Counsel submits that since the description given in the declaration is 'AAC, it includes 'aluminium alloy conductor' also and thus prays that since the declaration was correct in respect of not only that the input but also in respect of the final product, therefore, the appeal may be allowed.

3. Shri Satnam Singh, ld. SDR, submits that in the declaration and in their own admission, the Appellants have been describing the product as 'all aluminium alloy conductor' (AAAC) and, therefore, saying that AAC included 'aluminium alloy conductor' is not correct. The ld. SDR referred to the judgment of this Tribunal reported in 1995 (75) E.L.T.793, wherein the Tribunal had held that non-declaration of final product is not condonable. He submits that the position as admitted by the appellants that declaration in terms of the final product was not made specifically as a declaration declaring 'all aluminium alloy conductors' was made sometime in July, 1993. He submits that since the final product was not declared, the lower authorities have rightly denied them the benefit of utilizing the Modvat credit taken on the input.

4. Heard the submissions of both sides. We note that in the declaration filed on 14-10-1991 against entry 'D' under the description of the final product, the final product has been described as AAC Conductors whereas in the description of inputs and its tariff specification, the appellants have described the input as 'Aluminium Alloy Wire Rod' classifiable under Tariff description 7404.10. Though the Department contended that AAAC is the final product, we find that an alloy conductor of aluminium can be described as aluminium alloy conductor and perhaps the description as all aluminium alloy conductor is not the appropriate description of the goods. When we read it alongwith the description of the inputs,

we find that the input described in this item is Aluminium Alloy Wire Rod. Needless to say that an all aluminium conductor cannot be manufactured out of Aluminium Alloy Wire Rod. Hence the input Aluminium Alloy Wire Rod is an input for aluminium alloy conductor. We have also seen the cases cited and relied upon by both the sides. We find that the declaration covers the input as well as the final product. In this view of the matter, we allow the appeal.

Consequential relief shall be admissible to the appellant.