

**Devidayal Rolling Mills Vs. Collector of Central Excise**

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

**Decided On :** Jul-21-1997

**Reported in :** (1997)(96)ELT147TriDel

**Appellant :** Devidayal Rolling Mills

**Respondent :** Collector of Central Excise

**Judgement :**

1. These are two appeals filed by M/s. Devidayal Rolling Mills, Bombay being aggrieved by two separate orders in appeal passed by the Collector of Central Excise (Appeals), Bombay. As in both the appeals common issue of duty liability with regard to copper wire rods produced from duty paid copper wire bars is involved, they were heard together and are being disposed of by this common order.

2. We have heard Shri Jawahar Lal, Advocate for the appellants and Shri A.K. Agarwal, SDR for the respondent Revenue. We have gone through the facts on record and have given our due consideration and thought to the issue involved in both these proceedings.

3. We find that in his Order-in-Appeal No. ADN : 127/B1/91, dated 21-3-1991, which is the impugned Order-in-Appeal No. E/833/91-B1, the Collector of Central Excise (Appeals) had referred to the earlier orders of the Collector of Central Excise (Appeals) - Order-in-Appeal No. PPM/585/B1 265/87-B1, dated 18-8-1987, which had come up before the Tribunal in Appeal No. E/270/87-B1 filed by the

same appellants M/s.

Devidayal Rolling Mills and the Tribunal had allowed the appeal and had set aside the impugned order. The other Order-in-Appeal dated 24-11-1988 is the subject matter of the one of the present appeals bearing No. E/681/89-B1.

4. Shri Jawahar Lal, Id. Advocate referred to the Notification No. 3/91 (non-tariff), dated 30-1-1991 issued by the Central Government under Section 11C of the Central Excise Act, 1944 which provided as under: Whereas the Central Government is satisfied that according to a practice that was generally prevalent regarding levy of duty of excise (including non-levy thereof) under the Central Excises and Salt Act, 1944 (1 of 1944), the duty of excise on copper wire rods falling under the then existing Tariff Item No. 26A of the First Schedule to the said Act, manufactured out of duty paid copper wire bars, was not being levied under Section 3 of the said Act, during the period commencing on the 13th day of May, 1969 and ending with the 1st day of August, 1984; And whereas the special duty of excise on such copper wire rods was also not being levied under the relevant law related to the levy of such duty during the period aforesaid; Now, therefore, in exercise of the powers conferred by Section 11C of the said Act the Central Government hereby directs that the whole of duty of excise and the special duty of excise leviable under the said Act or, as the case may be, under the said law, on such copper wire rods, but for the said practice, shall not be required to be paid in respect of such copper wire rods, on which the said duty of excise or the special duty of excise was not levied during the period aforesaid, in accordance with the said practice.

5. It is seen from the above notification issued under Section 11C of the Act that the period covered by that notification is from 13-5-1969 to 8-5-1994. In the present proceedings the period involved is from 1-3-1984 to 30-4-1984 with regard to show cause notice dated 26-5-1984, and the period from 1-6-1984 to 31-7-1984 with regard to the show cause notice dated 27-10-1984. The goods covered were copper wire rods manufactured out of the duty paid copper wire bars.

6. The appellants had pleaded before the adjudicating authority vide Para 4 of the Order-in-Original No. H/193/90-91, dated 11-10-1990 that the raw materials

copper wire bars had already been subjected to the duty under the same Tariff Item No. 26A(1)(a) of the tariff under which the duty was again demanded on the copper wire rods. It has already been pleaded that a part of the raw material was imported and the bill of entry had been filed in support of the contention that the duty had been paid on the copper wire bars by the actual importers. The present appellants were doing the manufacturing on job work basis for their customers. With regard to the indigenous raw material reference was made to the classification list at page 46 of the paper book in Appeal No. E/833/91-B1 where in it had been described that the copper wire rods were rolled out of the duty paid copper wire bars. This factual position that the wire bars were duty paid had not been disputed by the department.

7. We consider that as there is no allegation that the wire bars from which the copper wire rods were produced were not duty paid and as whole of the period covered by both the show cause notices dated 21-5-1984 and 27-10-1984 was covered by the 11C Notification dated 30-1-1991, both the appeals merit acceptance.

8. Taking all the relevant considerations into account, we allow both these appeals. Ordered accordingly.

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