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**Simplex Castings (P) Ltd. Vs. Collector of Central Excise**

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

**Decided On :** Aug-04-1997

**Reported in** : (1997)(94)ELT502TriDel

**Appellant** : Simplex Castings (P) Ltd.

**Respondent** : Collector of Central Excise

**Judgement** :

1. These appeals arise out of separate adjudication orders passed by the Additional Collector of Central Excise, Indore.

2. The brief facts of the case are that the appellants herein are manufacturers of C.I. Ingot Moulds with steel bands. On a visit of the officers to the factory of the appellants on 9th October, 1987, it was found that the assessees had manufactured C.I. Ingot moulds with steel bands falling under sub-heading 8354.00 of the Schedule to the Central Excise Tariff Act, 1985 and cleared them at nil rate of duty under Notification No. 208/83-C.E., dated 1-8-1983 as amended. It was found that steel bands are first manufactured according to specifications and drawings supplied by the customers and subsequently, the steel bands are used captively in the manufacture of C.I. ingot moulds with steel bands. The steel bands had not been declared as a manufactured product by the assessees in their classification lists nor they had paid duty on the steel bands cleared for captive consumption.

3. The department issued a show cause notice dated 16-5-1988, which was received by the assessees on 21-5-1988, covering the period [28-2-1986] to 17-10-1987 proposing to recover duty of Rs. 1,28,849.78 p. and proposing imposition of penalty for manufacture of steel bands by the assessees without payment of duty. This show cause notice was adjudicated by order dated 12-4-1989 which has given rise to Appeal No.2493/89. A second show cause notice was issued on 9-1-1989 covering the period from 8-10-1987 to 31^0-1988 which was adjudicated vide order dated 26-4-1989 which has given rise to Appeal No. E/2494/89-B1.

4. We have heard Shri L.P. Asthana, learned Counsel who primarily contended that the process of cutting according to specifications and welding of steel bands out of steel plates, does not amount to manufacture as no new commercial commodity emerges as a result of process of cutting and welding; he further argues that in the first case, Appeal No. E/2493/89, the entire demand is beyond six months and in the absence of intention to evade payment of duty, the appellants cannot be held guilty of any suppression so as to make available to the department the extended period of limitation. Lastly, he argues that in any event, if the steel bands are held to be excisable goods attracting duty under sub-heading 7308.90 as held by the Adjudicating authority, the appellants would be entitled to take Modvat credit of duty paid on steel plates or in any event, would be entitled to deemed credit by virtue of various deemed credit orders issued by the Government of India right from April, 1986 onwards.

5. In reply, the learned DR draws our attention to the finding of the Additional Collector in which it has been held that the process adopted by the appellants has resulted in a transformation i.e. steel plates have become steel bands - a new commercial commodity has emerged as a result of the activities of the appellants and the steel bands are also made according to technical specifications, the purpose of the steel bands is different from steel plates. In other words, the steel bands are used to give support to cast iron ingot moulds. Therefore, the test of manufacture, according to the learned DR and as seen from the impugned order, has been satisfied.

6. We have carefully considered the submissions of both the sides. The technical specifications for steel bands is contained at Sl. No. 7 of the Technical specification for C.I. Ingot Moulds of M/s. Steel Authority of India which has been referred by the Adjudicating authority, are reproduced below: "Bands for Ingot Moulds : Ingot mould should be integrally cast with band as per drawing No. MO 4/0761. Band should be from rolled Section (instead of cast steel) of 50 mm thickness with two well joints maximum. It should confirm to overall dimension and taper as shown in the drawing is not necessary. Displacement of steel bands will be allowed to the extent of + 10 mm in horizontal and vertical axis." Steel bands are manufactured from steel plates which are cut to size, bent to shape and welded as per drawing and specifications of the product. The raw material viz. steel plates ceases to be steel plates and it acquires a distinct name and character by virtue of its shape and the function it performs. The steel bands are used to provide support and its use is different from that of steel plates out of which steel bands are manufactured. Therefore, it cannot be said that the process adopted by the appellants does not amount to manufacture and in fact, the test of manufacture is satisfied in the present case and steel bands have, therefore, rightly been held to be excisable commodities classifiable under sub-heading 7308.90 of the Schedule to the Central Excise Tariff Act, 1985.

7. As for the applicability of extended period of limitation (in the first case, the entire period is beyond six months while in the second case, part of the demand is barred by limitation) the plea that assessees were under the bonafide belief that the activities carried out by them did not constitute manufacture, is not acceptable. The judgment referred by the learned Counsel namely the Tribunal's judgment in the case of Aruna Industries v. Collector of Central Excise, Guntur -1986 (25) E.L.T. 580 (Tribunal) is distinguishable on facts. In that case, the steel structurals fabricated from iron and steel products by cutting, drilling holes and welding were held not to be goods within the meaning of the excise law and the work of fabrication and erection done by the appellants firm was held not to amount to manufactures under Section 2(f) of the Central Excise Act, 1944. The Tribunal held that series of changes carried out on the materials by the appellants do not take the commodities to a point where commercially it can no longer be recognised as a new and distinct articles.

8. In the present case, however, since we have held mat activities carried out by the appellants on the plates received by them amount to manufacture and further having regard to the fact that the Aruna Industries case was one dealing with steel structurals, it cannot be said that the appellants were under the bona fide belief that the activities carried out by them did not amount to manufacture. The argument that if the steel bands were held to be dutiable and duty had been paid thereon, the assessees could have availed Modvat credit, is not sufficient to hold that the extended period of limitation is not available to the department. We therefore, hold that the demands are not barred by limitation in both the cases and that the extended period is applicable in these cases. However, with respect to the plea of the appellants that in any event, they would be entitled to the benefit of Modvat credit for steel bands of deemed credit, we hold that they would be entitled to the benefit thereof. However, in the absence of any material available on record, to arrive at the quantum of relief, we remand the matter to the Adjudicating authority for quantifying the demand in the light of the principles set out in the Tribunal's order in the case of Chamundi Steels Re-rolling Mills v. Collector of Central Excise, Bangalore - 1994 (3) RLT 855 and thereafter, suitably modify the demand and grant consequential relief, if available, to the appellants in accordance with law.

9. In Appeal No. E/2493/89-B1, a penalty of Rs. 15,000/- has been imposed by the Adjudicating authority. However, having regard to the above facts and circumstances of the case we are of the view that the penalty requires to be reduced and accordingly reduce it to Rs. 1,000/-. Both the appeals are disposed of in the above terms.

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