Collector of C. Ex. Vs. Universal Containers (P) Ltd.

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SooperKanoon Citation : sooperkanoon.com/11947

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-14-1997

Reported in : (1999)(108)ELT573TriDel

Appellant : Collector of C. Ex.

Respondent : Universal Containers (P) Ltd.

Judgement :
1. All these appeals directed against the common order in appeal were heard together and are being disposed of by this common order.

1.2. The issue relates to admissibility or otherwise of the exemption on scrap and wastes arising during the manufacture of metal containers.

2. Arguing on behalf of the Revenue the ld. DR submits that the appellants have taken credit on the inputs in course of manufacture of metal containers and therefore in view of the condition under column 5 SI. No. 3 of the Notification No. 54/86-C.E. they are not eligible to remove such scrap without payment of duty.

3. The ld. Consultant for the Respondents submits that SI. No. 3 under column 5 has two conditions. Whereas Clause I refers to condition regarding availment of Modvat Credit on inputs, Clause 2 has no condition.

4. We have heard both sides. Notification No. 54/86 against SI. No. 3 appended to the Notification grants exemption to wastes and scraps other than mild steel. There are two conditions subject to which this exemption is available. Under

Clause I wastes and scrap must have arisen from goods falling under sub-headings 7201 to 7213 (excluding sub-headings 72.01.20, 72.12.60), 73.01,73.02.10,73.03,73.04, and 73.07,73.08 and ingot moulds of Heading 84.54 on which duty of excise on the additional excise duty has already been paid but credit of such duty has not been taken. In the alternative, Clause (ii) of the proviso against SI. No. 1, however, exempt wastes and scrap arising from goods falling under any heading number to the schedule other than heading or sub-heading in Clause (i) above which are manufactured or produced in India or imported in India on payment of duty liable under Customs Tariff Act, 1975. It would therefore be seen that there is no condition relating to the availment of the credit under Clause (ii) of this Notification. The impugned goods arise from manufacture of metal containers which were taxable under the Heading 8312.12 at the metals too. This heading is not specified at Clause (i) of the table against SI. No. 3 of notification and therefore such scrap would be entitled to exemption. Since the appellants are working under Modvat scheme the wastes arising from the manufacture of final product of metal containers can be either destroyed, exported, or removed for home consumption of payment of duty. Notification No. 54/86 prescribes rate of duty for scrap classifiable under heading 72.03.20. In view of this Rule 57C cannot be pressed into the service since the rate payable on metal scrap under Notification itself is nil. In view of this we reject the Revenue Appeal and uphold the impugned order. Cross Objections are also disposed of according.