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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-02-1998

Reported in : (2001)(135)ELT534TriDel

Appellant : Gurkartar Steels (P) Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The assessees were manufacturing steel ingots with the aid of Electric Arc Furnace and availing of the Notification Nos. 53/80-C.E.and also 144/77-C.E. In terms of Notification No. 53/80, the concessional rate of duty was available subject to certain proviso. The notification stated:- "Partial exemption to steel ingots produced by electric furnace. - In exercise of the power conferred by Sub-rule (1) of rule 8 of the Central Excise Rules, 1944, and in suppression of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 156/79-Central Excises, dated the 9th April, 1979, the Central Government hereby exempts steel ingots, falling under Item No. 26 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), and manufactured with the aid of electric furnace, from so much of the duty of excise leviable thereon as is in excess of two hundred rupees per metric tonne: Provided that such steel ingots are manufactured from any of the following materials of any combination thereof, namely :- (b) fresh unused steel melting scrap on which the appropriate duty of excise has been paid; (c) iron in any crude form falling under Item No. 25 of the said First Schedule on which the appropriate amount of duty of excise has been

paid; (d) skull scrap and runners and risers arising in the course of manufacture of steel ingots with the aid of electric furnace; (e) imported melting scrap of iron and steel (other than heavy melting scrap of iron and steel).

2. Item (g) of the proviso shall be in force upto and inclusive of the 31st day of March, 1982.

3. Nothing contained in this notification shall apply to steel ingots manufactured with the aid of electric furnace by a unit which is owned by an integrated ore-based steel plant." 2. The inputs received by the assessee consisted of runners and risers and cuts of billets, defective ingots etc. Vide show cause notice dated 4-6-1983, the allegation was made that the benefit of notification was not available inasmuch as the assessees had received apart from runners and risers, iron and steel products also which were not specified in the permissible inputs in the notification. On this ground duty for the period 1981-82 and 1982-83 was demanded. The Additional Collector in the impugned order having confirmed the demand, the present appeal is before us.

3. We have heard Shri P.S. Bedi learned Advocate for the appellants and Shri Ojha, SDR for the Revenue.

The first submission made by Shri Bedi was that part of the demand was hit by limitation. We have carefully perused the show cause notice. We find that the notice does not allege that the short-levy occurred on account of any fraud, suppression or wilful mis-statement on part of the assessee. The Supreme Court in their judgments including in the case of H.M.M. Ltd. reported in 1995 (76) E.L.T. 497 and in the case of Collector of Central Excise, Hyderabad v. Pharmasia Pvt. Ltd. reported in 1997 (92) E.L.T. 464 (S.C.) have held that demand made for the period beyond six months could not sustain in the absence of specific allegations being made in the show cause notice. We, therefore, hold that the demand for the period before December, 1982 is hit by limitation.

4. We now come to the merits of the case. The allegation in the show cause notice is that the inputs used by the assessee were those which were not enumerated in the proviso to the subject notification. Shri Ojha referring to the tariff as it stood at

that time claimed that word "steel melting scrap" specifically occurred in the description of goods given in Item No. 26. The goods such billet cuttings could not be covered under the description "steel melting scrap". Shri Bedi, on the other hand, relies upon the Chandigarh Trade Notice No. 33/CE/75 (1-Iron and Steel Products), dated 2-7-1975, reproduced in CEN-CUS, August, 1975 P-353, to press his claim that the definition of melting steel scrap is not to be interpreted in the restrictive manner. He also refers to CBEC Tariff Advise No. 16/81, dated 6-2-1981 which says that cut ends of MS round bars which are re-rollable would be covered under Tariff Item 26A and the smaller bars would be treated as melting scrap for assessment under Tariff Item No. 26.

5. We thus find that the Board in their executive instructions has expanded the scope of the term steel melting scrap. We, further find that the Entry at Serial No. (a) is not limited to steel melting scrap but also covers iron melting scrap. On examination of the Board's clarification and the wide choice of the eligible inputs given in the notification, we find that there was no warrant or cause to artificially restrict the scope of the term "melting scrap" and to segregate for admission by way of the competing tariff entries. Thus, on merits also we find that the demand does not sustain.

6. We, therefore, set aside the order, allow the appeal and order consequential relief to the extent warranted.