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**Gupta Steels Vs. Collector of Central Excise**

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**SooperKanoon Citation** : sooperkanoon.com/13847

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

**Decided On :** Jul-14-1998

**Reported in** : (1999)(113)ELT721TriDel

**Appellant** : Gupta Steels

**Respondent** : Collector of Central Excise

**Judgement** :

1. The issue involved in this case is granting of exemption under Notification No. 208/83 to the appellant. The dispute is in respect of inputs purchased by the appellants from ship breaking activity. The adjudication order has denied the appellants exemption in respect of materials purchased from the ship breaking activity after new Tariff came into force from 1-3-1986 on the ground that the goods in question had paid duty under Tariff Heading 72.15 and not under the tariff headings mentioned under Column (2) Serial No. 2 of the Table to the said notification. In respect of purchases from dealers before new Tariff came into existence, exemption has been denied on the ground that no evidence has been produced to show that re-rollable scrap obtained out of ship breaking was duty paid prior to December, 1985, even though certain invoices of J.K. Entt. and other iron and steel merchants shows payment of duty under protest.

2. Arguing the appeal, Shri K.K. Anand, ld. Advocate submitted that the denial of the benefit of exemption to the appellant was not correct. He relies on the judgment of the CEGAT Special Bench decision in Tigmnia Metal and Steel ltd. v. C.C.E., Aurangabad 1994 (73) E.L.T. 76 (Tribunal). He submits that the Tribunal

has held in this case that assessees will be entitled to the benefit under the old Tariff in view of the explanation to the Notification No. 208/83 which stated that for the purposes of the notification, all stocks of inputs in the country, except such stocks as are clearly recognisable as being non-duty paid, shall be deemed to be inputs on which duty has already been paid. He submits that this presumption should apply in respect of supplies purchased from the trade unless the Revenue is able to show that these are items which are clearly recognisable as non-duty paid. He also relies upon the finding in the impugned order that in some cases it was noticed that on ship breaking items duty was being paid. He submits that in respect of new Tariff also the Tribunal has clearly held that the benefit of the notification would be available even if the goods have paid duty under Tariff Heading 72.15. Shri Anand also submits that as the appellants were eligible for the exemption, seizure and confiscation of the materials and imposition of fine were also not justified and are to be set aside.

3. Ld. SDR Shri D.S. Negi submits that even though stray cases of payment of duty on materials obtained from ship breaking has been noted in the adjudication order, there was no established practice of payment of duty on these items till March, 1986. Therefore, the presumption should be in favour of denying the exemption and not in favour of granting the exemption, stray cases of payment of duty notwithstanding.

He also submits that exemption is available under the notification only in respect of goods falling under sub-headings mentioned in the notification. Sub-heading 72.15 is not one among them and therefore, no exemption could be granted in respect of goods which were subjected to duty under 72.15. He also draws our attention to allegation in the show cause notice that the appellant was changing documents to show that they received the inputs from dealers.

4. We have perused the records of the case and have considered the rival submissions. With regard to grant of exemption under Notification 208/83 under new tariff, we find that the exemption is in respect of goods falling under the sub-headings mentioned in the notification. We also find that Tariff Heading 72.15 also mentions the same sub-headings except for 72.03, 72.11, 72.12 and 72.13. There

is already a finding in the adjudication order that the goods in question are not covered by 72.03. Shri Anand submitted that the goods in question by their very nature do not come in the category of 72.11, 72.12 and 72.13.

Therefore, even though they paid duty under 72.15 they fall under sub-headings covered by the notification. In fact, 72.15 reads as under:- "Goods and materials of Heading Nos. 72.03, 72.06, 72.07, 72.08, 72.09, 72.10, 72.11,72.12 and 72.13 obtained by breaking up of ships, boats, and other floating structures." We also find that the Tribunal has already decided in Tigrania Metal and Steel Ind. Ltd. (Supra) that under the new Tariff goods obtained from ship breaking are eligible for exemption. We therefore, hold that the assessee is entitled to the exemption under 208/83 in respect of goods received under the new Tariff. Consequently, duty demand of Rs. 8,95,832.27 for this period is set aside. With regard to the exemption during the period under old Tariff also, we find that the Tribunal has held in the aforesaid judgment that the presumption that the inputs are duty paid, when they are purchased from the trade, is to be in favour of the assessee. Accordingly, we hold that the exemption under Notification 208/83 should be granted to the appellant in respect of materials arising from ship breaking purchased from the trade. Further, in respect of the purchases from ship breakers themselves, if the appellant produces proof that duty has been paid benefit of the notification should be allowed in respect of quantities so purchased directly from the ship breakers also. Since separate duty demand is not available on this score in the adjudication order, the matter is remanded for re-consideration on the above lines and to extend the benefit of notification as available to the appellant. We find that the confiscation of the material was also not justified in view of the fact that those goods were eligible to the exemption as already held. The confiscation is also therefore, set aside. The appeal is disposed of on the above terms.

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