

Collector of Central Excise Vs. Sree Rama Rolling Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-16-1998

Reported in : (1999)(106)ELT238TriDel

Appellant : Collector of Central Excise

Respondent : Sree Rama Rolling Mills

Judgement :

1. This is an appeal filed by the department against impugned order dated 27-3-1991, passed by the Commissioner Central Excise (Appeals), Bangalore.
2. The respondents M/s. Sree Ram Rolling Mills remained absent in spite of notice. We proceed to pass this order after hearing Shri Nunthuk, learned JDR.3. The respondent M/s. Sree Rama Rolling Mills filed classification list for copper plates falling under Heading No. 7409.00 and claimed exemption under Notification No. 61/83, dated 1-3-1983. The classification list also showed waste and scraps of copper falling under 7404.00 and benefit of Notification No. 177/88, dated 13-3-1988 was claimed. They had declared that strips manufactured out of old copper purchased from old market, the Assistant Collector has approved the classification list. Accordingly, the department has filed an appeal before the Collector (Appeals). The Collector (Appeals) dismissed the appeal filed by the department, hence this appeal.
4. According to the department the Notification No. 61/83 would be available only if the inputs are duty paid the copper and scrap which is generated is cleared

without payment of duty in terms of Notification No. 177/88 and therefore it is not entitled for the concessional rate under the Notification No. 61/83. He also relied upon the decision of the Tribunal in the case of M/s. Rapsri Engg.

Industries (P) Ltd. reported in 1989 (43) E.L.T. 577. In that case it was held that waste of copper and waste and scrap of aluminium are unconditionally exempted under Notification No. 172/84 and No. 182/84 with a suitable provision and waste of copper and waste of aluminium are clearly recognisable as non-duty paid or charged to nil rate of duty.

5. The Collector (Appeals) has distinguished the above decision on the ground that it has dealt with the issue recognisable as non-duty paid and the notification referred to therein was unconditional. In the present case the Notification No. 61/83 it is a conditional exemption.

It applies to Small Scale Industries. It exempts duty upto 10 metric tonnes and is made from duty paid scrap. Scrap generated in the course of manufacture cannot be deemed to be non-duty paid since it has arisen out of duty paid scrap itself which has discharged the duty liability before entering into the factory. In the facts and circumstances of the case we find that reasoning given by the Collector (Appeals) is correct and accordingly we are not inclined to interfere with his order. As a result, the appeal filed by department is hereby dismissed.

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