Commissioner of Central Excise Vs. Jet Fasteners Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-09-1998

Reported in : (1999)(106)ELT32TriDel

Appellant : Commissioner of Central Excise

Respondent : Jet Fasteners Pvt. Ltd.

Judgement :

1. The Collector (Appeals) in the impugned order held that "Respondents herein have claimed the benefit of Notification 178/88 on the ground that the goods are manufactured out of the scrap purchased from the open market on which the duty liability has been discharged. The Department has not produced any evidence to show that the goods purchased are clearly recognisable as non-duty paid. In the absence of any such evidence, the plea of the appellants has no basis and the appeal merits rejection. The appeal is accordingly rejected".

2. Being aggrieved by this order, the Revenue has filed the captioned appeal. The facts of the case briefly stated are that the respondents herein are the manufacturers of copper plates, sheets, circles etc.

They filed classification list claiming concessional rate of duty under Notification No. 178/88 dated 13-5-1988 as amended and Notification No.1172/84 (sic), dated 1-4-1988 (sic). The respondents also claimed that the products are manufactured out of scrap purchased from the open market and that the benefit of lower rate of concessional duty in view of the above two notifications, would be applicable to them. The Department alleged that concessional rate of duty is applicable only if the copper circles are manufactured out of duty paid inputs as specified in the Notifications. The Assistant Collector denied them the benefit. On appeal, the learned Commissioner (Appeals) extended the benefit of concessional rate of duty under the said Notification to the unit.

3. Shri D.S. Negi, learned DR appears for the appellants. None is present for the respondents. We have considered the submissions made by the SDR and perused the evidence on record. We have also perused the two notifications relied upon. The main argument of the SDR was that copper scrap used for manufacture of plates, sheets and circles on which the respondents have claimed concessional rate of duty, was purchased from the open market. That only that scrap which is generated in the process of manufacture is dutiable. That since the scrap in question was not purchased directly from the manufacturers, it could not be identified as duty paid scrap. He submitted that since this scrap comprised of old and used articles of copper, therefore, it was taken by the department as clearly recognisable as non-duty paid. When questioned whether there was any finding in this regard, he could not indicate any finding anywhere in the orders of the lower authorities.

The Department itself admitted in the ground of appeal that the waste and scrap of copper purchased from the open market by the assessee are mixed up scrap (duty paid scrap and duty exempted copper scrap) and it is not possible to identify and prove that the open market purchases made by the party is a non-duty paid one. We have also perused the order in appeal passed by the lower Appellate authority where there is a categorical finding that the Department has not produced any evidence to show that the goods purchased are clearly non-duty paid. The consistent view of the Tribunal in such cases is that once a stand is taken by the assessee that the goods are duty paid, then the onus shifts to Revenue to prove that the relevant goods are non-duty paid.

In the instant case, no investigation report has been filed to show that the department had conducted any investigation to prove that the goods were not duty paid. Having regard to the above case, we do not find any legal infirmity in the order of the learned Collector (Appeals). In the result, the impugned order is upheld and the appeal is rejected.