Commissioner of Central Excise Vs. Himpushp Engineers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-19-1999

Reported in : (1999)(107)ELT605Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Himpushp Engineers

Judgement :

1. In terms of F. No. 342/5/91-TRU, dated 7-7-1992 the facility of deemed credit on certain inputs was made available. The assessees in this case, took such deemed credit on brass scrap. After issuing the Show Cause Notice the Asstt. Collector examined the issue whether the concerned entry covered brass scrap or not. The findings were in the negative resulting in denying of the deemed credit and also in imposing of penalty on the assessees. The assessees then filed an appeal. The Collector (Appeals) in the impugned order relying upon the judgment of the Supreme Court in the case of Khandelwal Metal -1985 (20) E.L.T. 222 ruled that the description "copper waste and scrap" covered brass scrap also. Against this order, the present appeal has been filed by the revenue.

2. Shri Ashokan, arguing the case submitted that the Ministry's order covers only the scrap of primarily metal and does not cover scrap of alloys. In doing so, he relied upon the wording of the order and also the Trade Notice. He stated that the cited case of the Supreme Court relates to classification of brass scrap and ratio thereof does not cover the issue involved in this case. On this ground he submits that the impugned order be set aside.

4. I have carefully considered the submissions made and have seen the documents referred to.

5. The body of the cited order dated 7-7-1992 does not speak of the coverage thereof to virgin metal alone. The table annexed thereto has a number of entries, the contested entry reads as "06.03 copper waste and scrap". It is the revenue's argument that this description cannot coyer waste and scrap of brass. I find that section note 6 to Section XV of the CET states as follows : "Unless the context otherwise requires any reference in this schedule to a base metal includes a reference to alloys which, by virtue of Note 5 above are to be classified as alloys of that metal." 6. Therefore, wherever a reference is made to "copper", it would cover alloys thereof also.

7. The entry at Sr. No. 4 in the same table is worded in a specific manner. It covers "refined copper unwrought". Entry at Sr. No. 5 similarly covers "Copper alloys-unwrought". The heading for both shown is 74.03. At the material time, this heading covered both refined copper and copper alloys, a group of sub-headings covering both varieties. The rates of deemed credit were different and it was not possible to permit the higher credit given to refined copper where the input was copper alloys. But coming to sub-heading 7404 I find that the wording in the tariff equates with the wording in the impugned order.

Since the description does not permit differentiation to be made between the copper and copper alloys, the Collector correctly upheld the description as covering both the products. I find no support to the revenue's contention that the wording of the order limits itself to copper alone and does not include alloys thereof. In view of this finding, the appeal from the revenue fails and is dismissed.