

Commissioner of Central Excise Vs. Ex-protecta

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-20-1999

Reported in : (1999)(112)ELT76Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Ex-protecta

Judgement :

1. This is an appeal filed by the Department against the decision of the Collector of Central Excise (Appeals), Ahmedabad whereunder he allowed the assessee appeal and held that the respondents assessee entitled to the permission under Rule 57F(2) of the Central Excise Rules.
2. The assessee respondents are engaged in the manufacture of junction boxes, control station, switch, socket, lighting fixture etc. falling under Chapter 85 of the Central Excises and Salt Act, 1985.
3. By Order-in-Original, the Assistant Collector of Anand withdrew the permission allowed for clearance of inputs viz. aluminium scrap, bran scrap under Rule 57F(2) and directed them to clear the scrap under the provision of Rule 57F(4) of the Central Excise Rules, 1944. The assessee filed an appeal to the Collector who by the impugned order held that the assessee was entitled to the permission under Rule 57F(2) for sending aluminium & waste scrap for conversion into aluminium ingots. He followed the judgment of the Tribunal in the case of Chloride Industries Ltd. v. C.C.E.4. The Department argued that for waste scrap there is a specific

provision under Rule 57F(4) of the Rules therefore they have violated that particular sub-rule. The Tribunal in the said order in paragraph 9 thereof has held that Rule 57F(2) of the Rules permits the manufacturer to remove, with the permission of the Collector of Central Excise, "inputs as such, or after the inputs have been partially processed during the course of manufacture of final products" at a place outside, for the purpose of repairs, refining, reconditioning or carry out any other operation necessary for the final product or for purpose of manufacture of intermediate products necessary for manufacture of final product. What the appellants have been doing is to send the waste and scrap generated from the inputs during the process of manufacture for being reconverted into ingots and utilise such ingots as input. This could be taken as a process of reconditioning of the inputs. No specific meaning is given to the word "recondition" for the purpose of interpretation of the Rules. Therefore, the Id. Single Member of the Tribunal upheld contentions of the assessee.

5. The Department in this case argued that reference application has been filed and hence the judgment of the Tribunal should not be followed. In my view, ground taken cannot be accepted just because there is reference application is filed, it does not mean the precedent value of the judgment cited above is minimised or negated. Since there is no stay order from the High Court I am bound to follow the judgment of the Id. Single Member. I have not been shown before me any judgment which was taken the opposite view. I am, therefore of the view that the ground taken by the Department is not sustainable in law. Hence the appeal is dismissed.

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