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Commissioner of Central Excise Vs. Jay Hind Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-13-1999

Reported in : (1999)(66)ECC452

Judge : J T J.H., G Srinivasan

Appellant : Commissioner of Central Excise

Respondent : Jay Hind Industries Ltd.

Judgement :

1. M/s. Jay Hind Industries Ltd. manufactured aluminium castings.

Defective castings are received for reconditioning etc. in terms of Rule 173H. The reconditioning involved melting of the defective aluminium castings. The Assistant Collector held that such process amounted to manufacture and, therefore, the benefit of the said Rule was not available. The duty amounting to Rs. 2,22,094 was confirmed and a penalty of Rs. 1,000 imposed.

2. The Collector (Appeals), relying upon the Tribunal judgment in the case of J.G. Glass Ltd. reversed the order of the Assistant Collector. Against this order revenue have come in appeal, i.e. Appeal No. E/756/94.

3. In identical circumstances, demand confirmed by the Assistant Collector to the extent of Rs. 3,98,168 was set aside by the Collector (Appeals) placing reliance on the same cited order. The revenue have filed an appeal against this order also viz., Appeal No. E/212/94-Bom.

The issue being the same, these two appeals are taken up together for disposal.Shriram Refrigeration Industries Ltd. v. CCE, Hyderabad has been relied upon by the revenue in preference to the J.G. Glass case judgment (supra).

5. We have heard Shri K.M. Patwari for the revenue and Shri C.S. Lodha for the respondents.

6. Rule 173H permits goods cleared on payment of duty to be brought back into the factory of manufacture for the purposes of remaking, refining, reconditioning, repairing or being subjected to similar processes. The concluding part of this Rule requires that such processes should not amount to manufacture. A number of judgments passed by the Tribunal examining the eligibility of the goods in such a situation to the benefit of this Rule.

7. In Shriram Refrigeration Industries case, the Tribunal was dealing with the question whether a compressor when repaired by replacement of new parts would amount to a new distinct article. The Tribunal agreed with the appellant that their activity did not amount to manufacture and allowed the appeal. We find that the revenue does not derive much from this judgment.

8. The J.G. Glass judgment however, is more pertinent. In that case the defective vials of glass were melted and remanufactured. The Tribunal observed that in permitting remaking, refining, reconditioning etc. and at the same time prohibiting manufacturing introduced an element of ambiguity in the Notification. The Tribunal observed that it was well settled principles of law that where there was any ambiguity in any statutory provision the benefit should be extended to the appellant.

The judgment of the Tribunal was followed in a number of judgments. In considering an application for stay the Tribunal had relied upon the J.G. Glass judgment in the case of Serilite Industries v. CCE, Pune 1998 (103) ELT 391.Fordham Pressings (I) P. Ltd. v. CCE also the Tribunal referred to the judgment in the case of Shriram Refrigeration Industries Ltd. case but decided in favour of the assessee where the worn out dies were re-moulded during the process of reconditioning.

10. Thus, over the years, the ratio of J.G. Glass Works judgment has prevailed. Following the ratio of the judgment we find that the Collector (Appeals)'s Orders do not warrant interference and dismiss both the appeals.

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