

Commissioner of Central Excise Vs. C.M.i. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-17-1999

Reported in : (1999)(65)ECC497

Appellant : Commissioner of Central Excise

Respondent : C.M.i. Ltd.

Judgement :

1. There two appeals involve common issue. Therefore, a common order is being passed. Briefly stated the facts of the case are as follows : The respondents herein bring duty paid plastic granules. They also bring duty paid copper wire. They are undertaking plastic insulation of such copper wire. In the course of such insulation of wire and cables, plastic scrap arise in the following forms :- (1) at the stage of extrusion of the plastic granules, in the form of plastic sheeths. It is powdered and plastic sheeths scrap and there is no question of charging the duty on such plastic scrap because plastic granules are already duty paid. The Assistant Collector has already given the benefit of to the respondents on such scrap, (2) Next stage of scrap is when the insulation of the copper wire takes place and the insulation is not proper. In that case the scrap consists of plastic mass entangled with copper wire, (3) Plastic content of the insultated copper scrap wherein PVC cannot be separated from copper. On the last two categories of scrap the Assistant Collector had denied the respondents herein the benefit of Notification No. 53/88, dated 1-3-1988 on the ground that these scraps are generated after wire and cables came into existence.

2. On appeal before the lower appellate authority, the respondents herein succeeded. Their contention was that the wires and cables had not come into existence and the scrap of the latter two categories arise in the course of manufacture of wires and cables and not after manufacture of wire and cables and thus they were entitled to the benefit of Notification No. 53/88-C.E. This plea found favour from the lower appellate authority. Hence these appeals by the Revenue. In this connection, it is appropriate to set out the findings of the lower appellate authority: "...I observe that the same issue had come up before me in the same appellants' case and vide my observation in Para 4 of the Order-in-Appeal No. and scrap cannot be taken as arising from electric wires and cables in such circumstances. In fact, the Assistant Collector in the order has himself stated that such waste, paring and scrap of plastics are generated "during the course of manufacture of wires and cables". Once it is accepted that waste and scraps have arisen during the course of manufacture of wires and cables, it cannot be logically argued that such wastes and scrap arose after the completion of manufacture of wires and cables. The Asstt. Collector on physical verification of the manufacturing process has noted that the scrap got generated in three forms. The first one is waste and scrap of plastics in lump form for which it has been accepted by the adjudicating authority to be scrap generated from PVC granules of Chapter 39 on which the duty liability has been discharged. The second type is the scrap generated on removal of the upper PVC sheets from rejected pieces of wires and cables when removed for the purpose of testing or rejected on account of certain manufacturing defects. Even in respect of such waste and scrap, I observe that the Asstt. Collector has impliedly stated that the scrap has arisen out of the rejected pieces of wires and cables. In other words, even in these circumstances the wires and cables had manufacturing defects which must have arisen during the course of manufacture of such wires and cables. The third category is the plastic content of the insulated copper scrap wherein PVC cannot be separated from copper. From this description also, I find that the scrap seems to be an entangled mass of PVC and copper scrap. These are also scraps of wastes which must have arisen in the course of manufacture of wires and cables. Therefore, I find that the decision of the Asstt. Collector in this case is not sustainable in law and on facts. I do not find any justification to deviate from the view already taken

by me in my earlier Order-in-Appeal. The Asstt. Collector's decision is thus annulled and the appeal is disposed of accordingly on the above lines." 3. Ld. SDR Shri R.D. Negi, for the Revenue has urged that such waste and scrap, it is not disputed before the Tribunal, has not arisen from the PVC granules, this has arisen during the course of manufacture of electric wire and cables. It is further urged that the conclusion drawn by the Asstt. Collector that the PVC scrap generated out of PVC granules is by-product in the manufacture of electric wire and cables is not correct as PVC scrap has arisen during the course of manufacture of electric wire and cables. In the instant case, the benefit of Notification No. 14/92-C.E., dated 1-3-1992 and of Notification No.53/88, dated 1-3-1988 is not available because waste parings and scrap of plastic has arisen not from the goods falling under Chapter 39 but from the goods falling under Chapter 85 on which the respondents has not paid any duty. Ld. SDR has reiterated the aforesaid submissions urged in the memos of appeal by the Revenue.

4. Ld. Consultant Shri Ascharaj Lal on the other hand reiterated the finding of the lower appellate authority.

5. We have carefully considered the pleas advanced from both the sides.

The plea of the Revenue is that waste and scrap of wires and cables arising during the manufacture of wires and cables be considered to be wires and cables falling under Tariff Heading 85.44. These cut pieces of wires and cables cannot be considered to be wires and cables falling under said Chapter Heading. They are merely scrap arising in the course of manufacture of wires and cables and they are of no use for anyone.

The question before us is whether the waste and scrap of plastic contained in these cut pieces of wires and cables is entitled to the benefit of Notification No. 53/88-CE. We haveno doubt that it is entitled to the benefit of said notification because the granules out of which the plastic sheathing was made was already duty paid admittedly, though sheathing may be in the form of cut pieces of the wires and cables. Reasoning of the lower appellate authority is fully justified and we endorse the same.

6. We, therefore, do not find any substance in the Revenue's appeal.

Hence we reject the same.

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