

Mazgaon Containers and Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-09-1999

Reported in : (1999)(113)ELT165TriDel

Appellant : Mazgaon Containers and

Respondent : C.C.E.

Judgement :

1. In this appeal filed by M/s. Mazgaon Containers & Fabricators Pvt.

Ltd., the matter relates to the duty liability on the waste and scrap arising out of the Iron and Steel sheets/strips/coils during the course of manufacture of metal containers. The appellants were bringing duty paid Iron and Steel sheets/strips/coils and were availing of the facility of Modvat credit. The Modvat credit so taken was utilised towards payment of Central Excise duty on metal containers. During the course of manufacture of metal containers, certain waste and scrap has arisen and while the Revenue had contended that such waste and scrap was to be cleared on payment of Central Excise duty of Rs. 600/- per tonne the appellants have taken a view that the same was exempted under Notification No. 171/88-C.E.2. When the matter was called, none appeared for the appellants. The notice for today's hearing has been received back with the postal remarks "left". The notice was sent at address given by the appellants in their Memo of Appeal. As the matter is old, in which show cause notice was issued in the year 1990, we are proceeding to deal with the matter on merits after hearing Shri R.K. Sharma, SDR.3. We find that there is no dispute about the facts of the case. The

appellants had brought iron and steel sheets, strips and coils from outside and have taken Modvat credit in respect of the Central Excise duty paid thereon.

4. In the course of manufacture of metal containers, waste and scrap has arisen. The appellants have claimed that the waste and scrap arisen during the course of manufacture of metal containers was not a manufactured product and in any case, they were eligible to the benefit of Notification No. 171/88-C.E. We find that the matter relates to the Modvat scheme and as the appellants have already availed of the benefit of Modvat scheme, the waste and scrap had to be cleared in terms of the provisions of the Modvat scheme on payment of Central Excise duty or had to be destroyed. The Id. Collector of Central Excise (Appeals) had held that the waste and scrap were excisable and that they had to discharge the duty liability in terms of the Modvat scheme.

7. We find that the benefit under Notification No. 171/88-CE., dated 13-5-1988 was conditional and one of the conditions was that the benefit of Modvat scheme or proforma credit had not been availed of. As the appellants has availed of the facility of Modvat scheme, we find that the benefit of full exemption was not available to the waste and scrap in question.

8. Keeping in view the facts and circumstances of the case, we do not find any merit in this appeal and the same is rejected. Ordered accordingly.

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