

Collector of Central Excise Vs. Eastern Electro Chem

Collector of Central Excise Vs. Eastern Electro Chem

SooperKanoon Citation : sooperkanoon.com/16023

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-11-1999

Reported in : (1999)LC861Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Eastern Electro Chem

Judgement :

1. The Revenue has filed this appeal against Order-in-Appeal dated 11-3-1994 passed by the Collector of Central Excise (Appeals), Bhopal.
2. In the impugned order the benefit of Notification No. 217/86, dated 2-4-1986 was allowed in respect of M.S. castings which were used for the manufacture of Calcium Carbide.
3. Brief facts of the case are that the respondents are engaged in the manufacture of calcium carbide carbon paste is filled in the M.S.casting through which current is passed and then it is lowered into the furnace when the carbon paste hardens and burns out in the furnace. The M.S. casting also gets melted and mixed up with other molten metal. The respondent gets duty-paid M.S. sheets from the market from which M.S.casting are made within the factory for captive use. A show cause notice was issued to the respondent stating therein that the benefit of Notification 217/86-C.E. was not available on M.S. casting. The adjudicating authority confirmed the show cause notice but on appeal filed by the respondent, the appeal was allowed.

4. Learned JDR appearing on behalf of the appellant submits that Notification 217/86-C.E. exempts specified inputs manufactured in a factory and used within the factory of production, or in any other factory of the same manufacturer in or in relation to the manufacture of final products specified therein. He submits that the Explanation to the notification specifically excluded the machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods as 'inputs'. He submits that these M.S. castings were used as containers for carbon paste and lowered in the furnace for the manufacture of the final product. He therefore submits that M.S. castings being used as container are not eligible for the benefit of notification. Learned Counsel appearing on behalf of the respondent submits that the Revenue is not disputing the use of M.S. casting in the manufacture of the final product. He also stated that the castings were used as containers but were consumed during the manufacture of final product. He relied on the decision of the Tribunal in the case of H & R Johnsons (I) Ltd. v. C.C.E., 1998 (104) E.L.T. 146 (Tribunal) and submits that in this case refractory containers were held to be eligible for the benefit of Notification 217/86-C.E. He therefore prays that the appeal be dismissed.

5. Heard both sides. In this case the issue is whether M.S. casting which are used as container is entitled for the benefit of Notification No. 217/86-C.E. The relevant portion of the notification is reproduced below : Exemption to Modvat items if used within the factory of production or in any other factory of the same manufacturer in the manufacture of finished goods. - In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods specified in column (2) of the Table hereto annexed (hereinafter referred to as "inputs") manufactured in a factory and used within the factory of production, or in any other factory of the same manufacturer in or in relation to the manufacture of final products specified in column (3) of the said Table, from the whole of the duty of excise leviable thereon, which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986): Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products which are exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty : Provided further that where such use of inputs is in a factory of a manufacturer, different from his

factory where the goods have been produced, the exemption contained in this notification shall be allowable subject to the observance of the procedure set out in Chapter X of the Central Excise Rules, 1944.

Explanation. - For the purpose of this notification, 'inputs' does not include - (i) machines, machinery, plant equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products; (ii) packaging materials in respect of which any exemption to the extent of the duty of excise payable on the value of the packaging materials is being availed of for packaging any final products; (iii) packaging materials the cost of which is not included or had not been included during the preceding financial year in the assessable value of the final products under Section 4 of the Central Excises and Salt Act, 1944 (1 of 1944), or----- 6. Thus, a reading of the notification shows that exemption is provided for the inputs manufactured in the factory and used within the factory of production in or in relation to the manufacture of final products specified in the notification. The Explanation to the notification specifically mentions that for the purpose of the notification 'inputs' does not include machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods. The respondents are not disputing the fact that M.S. castings were used as container. Reliance of the respondent on the decision of the Tribunal in the case of H&R Johnsons (I) Ltd. (supra) is not relevant in the present case. In that case refractory container comprising pillars, bases and setting bats were used in the manufacture of tiles. The Tribunal held that these pillars, bases and setting bats cannot be said to be a container and, therefore, the benefit of Notification 217/86-C.E. had wrongly been denied to the assessee.

7. In the present case, the respondents are not disputing the fact that M.S. castings were used as container. Therefore we find that the assessee was hit by the exclusion clause of the notification.

8. In view of the above discussion, the impugned order is set aside and the appeal is allowed.