

Cce Vs. Precision Alloys

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-14-1999

Reported in : (1999)(85)LC644Tri(Delhi)

Judge : J Balasundaram, R T Lajja

Appellant : Cce

Respondent : Precision Alloys

Judgement :

1. In this appeal filed by the Revenue, the respondents are M/s.

Precision Alloys and the matter relates to the duty liability on the products obtained by the process of casting and referred to in the show cause notice dated 16.8.1988 as bars/rods. The goods in question were obtained at an intermediate stage by casting, in the sand moulds, of the molten alloy of copper and nickel for captive consumption in the process of manufacture of resistance wire. Under show cause notice dated 16.8.1988 Central Excise Duty of Rs, 29,960/- was demanded. Penal provisions were also invoked. In reply to the show cause notice, the noticees submitted that the so-called bars/rods emerging at an intermediate stage in the process of manufacture of resistance wires were not the bars/rods as understood in the trade, as specified in the ISI specifications and as defined in the Central Excise Tariff. They were also not marketable as such. Before the adjudicating authority, it was pleaded that the goods under, consideration were, in fact, round pieces of alloy which when passed through the rollers emerged as a

roughly shaped crude bar/rod. The adjudicating authority agreed with the contention of the assessee that the product manufactured by them was neither the bar nor the rod but a crude item which was incidently obtained in the manufacture of their final product - resistance wire.

He also held that the goods were not marketable. He dropped the proceedings against M/s. Precision Alloys.

2. The matter was heard on 15.1.1999 when Shri M.P. Singh, JDR appeared for the appellants/Revenue. Shri P.N. Panwar, Consultant, represented the respondents, M/s. Precision Alloy.

3. We have gone through the submissions made by both the sides and have perused the records. It is seen from the facts on record that in the process of manufacture of resistance wire, the copper and nickel were mixed in a crucible and were heated upto the melting point so that both the metals are mixed uniformly. The molten alloy metal was poured into the sand moulds and by the process of casting roughly, round shaped crude products emerged. Such crude products were subjected to the process of rolling/drawing to obtain wires of required sizes through the intermediate stage of roughly shaped crude bar/rod. Such roughly shaped crude bar/rod obtained at an intermediate stage in the process of manufacture of wires could not be considered as bars and rods for the purpose of the Central Excise Tariff.

4. In the grounds of appeal, the revenue had pleaded that the adjudicating authority had not considered the definition of bars and rods as given under Chapter Note I(d) in Chapter 74 of the Central Excise Tariff and according to such definition bars and rods could be a cast product also. Bars and rods had been defined in the Central Excise Tariff as under: Rolled, extruded, drawn or forged products, not in coils, which have a uniform solid cross-section along their whole length in the shape of circles, ovals, rectangles (including squares)', equilateral triangles or regular convex polygons (including "flattened circles" and modified rectangles", of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). Products, with a rectangular (including square), triangular or polygonal cross -section may have corners rounded along

their whole length. The thickness of such products which have a rectangular (including "modified rectangular") cross-section exceeds one-tenth of the width. The expression also covers cast or sintered products, of the same forms and dimensions, which have been subsequently worked after production (otherwise than by simple trimming or de-scaling), provided that they have not thereby assumed the character of articles or products of other headings.

Wire-bars and billets with their ends tapered or otherwise worked simply to facilitate their entry into machines for converting them into, for example, drawing stock (wire-rod) or tubes, are however to be taken to be unwrought copper of heading No. 74.03.

In the grounds of appeal there is no reference to the dimensions of the product under consideration. There is no discussion about the form of the products also as to whether the impugned goods satisfied the description as given in the definition of bars and rods as extracted above. The respondents had pleaded in reply to the show cause notice that their goods were not wire rods as understood in the trade. There is no rebuttal of this plea by the Revenue.

5. In reply to the show cause notice, the respondents had also submitted that the goods under consideration were not such goods as could come to the market to be bought and sold. The adjudicating authority had agreed with the submissions of M/s. Precision Alloys that the said goods were not marketable and were not marketed. He had observed as under: The other aspect of the case is that the so-called product bar/rod was never cast in the market and the formation of cost product was only incidental to the manufacture of the final product i.e.

resistance wire. I feel that there may be a chain of processes involved in the manufacture of a finished product and an intermediate product may be visible one but not fit for consumption or marketable. It has also not been alleged in the show cause notice that the party has sold so-called bar/rod in respect of which demand was raised.

The Revenue in the grounds of appeal had not touched this point of marketability. *Bhor Industries Ltd. v. CCE* , the Hon'ble Supreme Court had held

that marketability, was an essential ingredient in order to be dutiable under the Schedule to the Central Excise Tariff Act, 1985 (refer para 7 of the judgment). According to the Apex Court, the test of marketability or capable of being marketed was to be applied to make the goods excisable (para 11 of the judgment).

In the case of CCE v. Ambalal Sarabhai Enterprises , the Hon'ble Supreme Court had held that to make the goods liable to duty the burden was on the Department to prove that the goods was marketable (Head Note).

The Hon'ble Supreme Court in the case of Andhra Pradesh State Electricity Board v. CCE, Hyderabad , had observed that marketability was a question of fact to be decided in the facts of each case. In the present case, we find that the finding of fact that the goods in question were not marketable had not been rebutted in appeal by the Revenue.

6. On careful consideration of the matter, we agree with the view taken by the learned Addl. Collector of Central Excise. We do not find any merit in this appeal filed by the Revenue and the same is rejected.

7. The operative part of this order was announced in the open court on 15.1.1999.

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