Greysham and Co. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-10-1999

Reported in : (2000)(117)ELT350TriDel

Appellant : Greysham and Co.

Respondent : Collector of Central Excise

Judgement :

2. The appellants herein are manufacturing the railway parts falling under Tariff Sub-heading 8607.00. The raw material used for the manufacture of these parts are steel and pig iron on which the appellants are availing the benefit of Modvat credit. The process involved in the manufacture of such railway parts includes forging, machining, boring, turning, threading and grinding etc. Some of these processes are undertaken through various job workers to whom the raw material i.e. steel and pig iron are sent for such processes.

3. The appellants are having the permission under Rule 57F of the Central Excise Rules, 1944 for sending the inputs to their job workers after taking Modvat credit on their own. It is not disputed that in the course of manufacturing the railway parts, waste and scrap arises in the appellants' factory or in the job workers' factories. It however appears that the appellants did not clear the waste and scrap from their factory, so arisen, on payment of duty or did not bring the waste and scrap from their job workers to their factory and then clear the same on payment of duty. A show cause notice was therefore issued on 26-3-1993 asking the appellants as to why the duty of Rs. 2,95,221/- be not recovered for the period

April, 1988 to December, 1991 on the waste and scrap so arisen either in their own factory or in their job workers premises and on which the duty was not paid at all. On adjudication the adjudicating authority has confirmed the aforesaid amount of duty and has also imposed a penalty of Rs. 5,000/- on the appellants. Hence this appeal before the Tribunal.

4. Learned Advocate Sh. J.S. Agarwal submits that the turning and boring and machining waste and scrap, whether arisen in their own factory or whether arisen in the job workers premises, is not an excisable article inasmuch as it is scum or junk which is not marketable and thus not "goods" at all. For this proposition, he relies on Bombay High Court's judgment in Indian Aluminium Co. v. A.K.Bandyopadhxjay reported in 1980 (6) E.L.T. 146 and Modi Rubber v. Union of India 5. It is also submitted by the learned Advocate that quantum of waste and scrap arrived at by the adjudicating authority for discharging duty thereon is not correct inasmuch as the quantum of waste and scrap will also include invisible loss occurring as a result of particles of waste and scrap in the course of machining of the articles being taken away by the breeze and wind. But we note that no estimate of such invisible loss has at all been made by the appellants either in the reply to the show cause notice or at the appeals stage. Learned Advocate submits that demand of duty on invisible losses will not be justifiable. The adjudicating authority on its own should have given a reasonable benefit on such invisible losses rather than confirming the entire amount of duty, submits the learned Advocate.

6. He also points out that the demand of duty is barred by time in that the show cause notice was issued well beyond the period of 6 months.

The department was fully aware that the appellant had been sending the inputs to their job workers under the provisions of Rule 57F(2) after taking permission from the concerned departmental authorities. It was therefore the duty of the department to point out as to why the duty on scrap arisen in the job workers premises has not been paid. There is no question of any wilful suppression of facts because the department was aware about the process of manufacture undertaken by the appellant in their own premises as well as in the job workers premises as

they are supposed to be in know of the same.

8. Opposing the contentions, learned SDR submits that waste and scrap of iron and steel is a specific commodity made leviable to excise under Tariff Heading 72.04. Waste and scrap of iron arisen in the course of mechanical working is not a scum or junk. It has a regular market. He submits that it is a simple case of duty being not paid by the appellant on the waste and scrap arisen in the course of manufacturing the railway parts. The scrap generated ought to have been removed by the appellant either by bringing same from the job workers premises and then taking into their records and clearing the same on payment of duty. It is stated so clearly in Rule 57F. None of these steps have been taken by the appellant. It appears that waste and scrap has been sold by the appellant by not paying the duty on their own. He further points out that the method of arriving at the quantum of scrap was fully agreed to by the concerned manager of the appellants factory.

Appellants cannot challenge the quantum of scrap so arrived at this stage. He therefore prays for dismissing the same.

9. We have carefully considered the pleas advanced from both sides. We do not agree with the submissions of the learned Advocate Sh. J.S.Agarwal that waste and scrap arisen in the process manufacture of railway parts by the various processes mentioned above can be treated as junk and scum. Waste and scrap, as a matter of fact, is mentioned in the tariff and by our experience we can say that it is treated as marketable commodity not only in India but also internationally. There is a regular sale and purchase of waste and scrap of iron and steel in the market. We therefore do not accept the contention of the learned Advocate that the waste and scrap arisen in the present case is not a marketable commodity. Waste and scrap therefore arisen in the present case is leviable to duty under Tariff Heading 72.04 10. Point raised regarding quantum of waste and scrap by the learned Advocate is not acceptable at this stage of the proceedings. We observe that they have not given their estimate of invisible losses nor any acceptable evidence being produced by them before the adjudicating authority or even before us. The adjudicating authority has rightly observed that no standard

literature has been produced by the appellants that in production of iron and steel articles such as railway parts in this case any invisible loss arises at all. We have to remember that we are not dealing with a light commodity but a heavy metallic waste and scrap. Therefore we are not inclined to give any benefit to the appellants regarding the invisible losses claimed by them.

11. As regards the limitation we are inclined to agree with the submissions of the learned SDR and the finding of the adjudicating authority that it is a simple case of removal of waste and scrap without payment of duty. The appellants are supposed to be fully aware about the procedure regarding payment of duty on scrap and the liability of duty thereon in terms of the said rule of the 57F under which the appellants asked for the permission from the Central Excise authorities. Larger limitation of five years has been rightly invoked by the adjudicating authority. Accordingly appeal is liable to be dismissed. We order accordingly.

12. Before parting with this order, we may observe that the learned Advocate Sh. J.S. Agarwal's reliance on the Tribunal's judgment in the case of Laxman and Sylvania reported in 1998 (103) E.L.T. 504 which inturn relies on Apex Court judgment in the Multimetals Ltd. v. ACCE reported in 1992 (57) E.L.T. 209 is not relevant to the controversy before us. The controversy in the said case was whether the Modvat credit of duty will be available to the inputs contained in the finished goods as contended by the revenue or it will be available to the inputs used in the manufacture of the finished goods as contended by the assessees. Such a controversy is not before us. In other words Modvat credit of duty on burning loss of the inputs incurred during the process of manufacture in that case was sought to be denied by Revenue which was rejected by the Tribunal. We are not faced in the present case with any burning loss of the inputs. We have already held that there are no invisible losses in the nature of process of manufacture undertaken by the appellants.

13. At this stage learned SDR points out that the appellant herein in its appeal memo have relied on the applicability of Notification No.217/86-C.E. and I71/88-C.E. Such a plea was not taken before the adjudicating authority. At the outset, learned Advocate Sh. J.S.Agarwal had stated that he would not take the said

pleas in the arguments before the Bench. Therefore the pleas based on the said notifications have not been considered by us. Appeal disposed of.