

Commissioner of C. Ex. Vs. Adarsh Steel Re-rolling Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-13-1999

Reported in : (2002)(146)ELT334TriDel

Appellant : Commissioner of C. Ex.

Respondent : Adarsh Steel Re-rolling Mills

Judgement :

1. These are two appeals -one filed by the Revenue against the Collector (Appeals) order dated 2-4-1987 allowing the benefit of Notification No. 208/83, dated 1-8-1983 and the second appeal is filed by M/s. Adarsh Steel Re-Rolling Mills against the order of the Additional Collector confirming the demand of Central Excise duty.
2. We have heard Shri M.P. Singh, Id. D.R. on behalf of the Revenue and Shri R. Santhanam, Id. Advocate on behalf of the assessee.
3. The assessee is manufacturing iron & steel bars, which are classifiable under tariff heading 72.09 of the Schedule to the Central Excise Tariff Act at the relevant time out of waste and scrap falling under heading 72.03 of the Schedule to the Central Excise Tariff Act.

They had claimed the benefit of Notification No. 208/83 in their two classification lists filed in 1986. A show cause notice was issued to them for denying the benefit of notification as waste and scrap of iron and steel was not specified as an input

for final product falling under heading 72.09 in the notification. The Assistant Collector disallowed the benefit of the notification, which was set aside by the Collector (Appeals) in the first impugned order. After hearing both sides, we agree with the revenue that the benefit of Notification No. 208/83 was not available to the appellants as waste and scrap falling under 72.03 was not specified as an input in serial number 2 of the Table annexed to the notification. Accordingly, the appeal filed by the Revenue is allowed.

3. The Additional Collector, under order dated 24-10-1989, confirmed the demand of Rs. 69,089.03 for the period from August, 1986 to September, 1986. Ld. Advocate has submitted that as they had filed the classification lists clearly classifying their product under heading 72.09 and claiming the exemption under the notification, they had not suppressed any fact from the department and if there was any doubt about the availability of the notification, the department should have taken the action to demand duty from them. He, further, mentioned that, in fact, the show cause notice dated 19-11-1986 was issued to them for modifying the classification list by denying the benefit of exemption notification and accordingly the demand cannot be raised for the extended period of limitation.

4. Shri M.P. Singh, Id. D.R., on the other hand, contended that as the assessee did not produce the duty-paying documents indicating the duty paid nature of the inputs and the benefit of notification was claimed by them, it was their duty to reveal all the facts. We do not find any substance in the contention made by the Revenue in view of the fact that the classification list has been filed by the assessee claiming the benefit of exemption notification and the department also, on scrutiny, came to the conclusion that the benefit of notification is not available, nothing prevented them from raising the demand at the relevant time. We do not find any reason which could justify the claim of the Revenue that there was any suppression of facts and, accordingly, we hold that the entire demand of duty is hit by time limit specified under Section 11A(1) of the Central Excise Act.

Accordingly, the order passed by the Additional Collector is set aside and the appeal is allowed.