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Collector of Central Excise Vs. Standard Wire Rod Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-12-1999

Reported in : (1999)(114)ELT995TriDel

Appellant : Collector of Central Excise

Respondent : Standard Wire Rod Mills

Judgement :

1. When the case was called none appeared on behalf of the respondents.

The notice of hearing issued to the respondents was received back with the postal remark 'Left'. Therefore, the appeal is being taken up in the absence of respondents.

2. Revenue filed this appeal against Order-in-Appeal dated 20-5-1993 passed by the Collector (Appeals). Brief facts of the case are that the respondents are engaged in the manufacture of Bars and Rods of Iron falling under Heading 72.14 of the Central Excise Tariff and Angles, Shapes, and Sections falling under Heading 72.16 and availing exemption under Notification No. 202/88, dated 20-5-1988. Three show cause notices were issued to the respondents stating that their final products falling under Heading 72.14 and 72.16 of the Central Excise Tariff are not eligible for benefit of Notification No. 202/88 since exemption is available only for certain primary forms of iron besides iron sliper, tubes and pipes and cast iron fittings manufactured from waste and scrap steel. The adjudicating authority held that since the respondents are using re-rollable material which is not to be

treated as waste and scrap falling under sub-heading 7204.90 of the Tariff but falls under Tariff Heading 7214.90 as bars and rods. The re-rollable material of bars and rods and final products manufactured by the respondents are covered against SI. No. 2 of the table annexed to the Notification No. 202/88 as inputs and final products respectively.

Therefore, the benefit of Notification No. 202/88 is available to the respondents. The Revenue filed the appeal before the Collector (Appeals) and before the Collector (Appeals) the contention of the Revenue was that the inputs used in the manufacture of final product were clearly non-duty paid. Therefore, the condition mentioned in Notification No. 202/88 that the final product should be manufactured out of the specified inputs on which duty has already been paid is not fulfilled. The contention of the Revenue was not accepted by the Collector (Appeals) in the impugned order.

3. Heard Shri Jagdish Singh, learned JDR and perused the appeal papers.

Now before us the contention of the Revenue is that the inputs used in the manufacture of final product are non-duty paid, therefore, the condition provided in the Notification No. 202/88 that final product should be manufactured out of the specified inputs on which duty has been paid is not satisfied.

4. We find that the show cause notices were issued to the respondents on the ground that benefit of notification is not available for the final product manufactured by the respondents as final product falls under Headings 72.14 and 72.16 of the Central Excise Tariff and exemption is available only for primary forms of iron besides iron sliper, tube and cast iron fittings manufactured from waste scrap of steel. Therefore, we find that the Revenue now wants to deny the benefit of notification for the reason other than mentioned in the show cause notice. Therefore, the appeal filed by the Revenue is beyond the scope of show cause notices. The Revenue cannot take a new ground to deny the benefit of notification other than mentioned in the show cause notice. Therefore, the appeal is dismissed.

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