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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-17-2000

Reported in : (2001)(133)ELT627TriDel

Appellant : Him Ispat Ltd.

Respondent : Collector of Central Excise

Judgement :

1. In these two appeals filed by M/s. Him Ispat Ltd., the common issue involved is whether the side slits arising during the manufacture of cold rolled strips in coils out of hot rolled strips are waste and scrap of iron and steel classifiable under Heading 72.04.90 of the Schedule to the Central Excise Tariff Act.

2. Shri Vinod Aggrawal, learned Advocate, submitted that the waste and scraps of iron and steel arises as the mill of the Appellants can accept only strips with less than 100 mm width and if width is beyond 100 mm, they have to cut it from the sides; that the waste also arises due to end cutting of hot rolled strips and due to strips getting damaged during the process of cold rolling. He further submitted that such waste and scrap was classified by the Department under sub-heading 7211.59, 7208.20 and 7209.20 during the period from 1-4-1991 to 30-9-1991; that as according to them, waste and scrap was classifiable under sub-heading 7204.90 they filed refund claims for refund of the duty paid in excess by them, that the Assistant Collector rejected their refund claims holding that waste and scrap would generally be used for remelting and apparently would not cover rerollable scrap; that in Appeal No. E/264/93-B, the Collector (Appeals) confirmed the

Adjudication Order holding that the Appellants could not prove that waste and scrap was used for remelting purposes. In Appeal No.E/3037/92-B the Collector (Appeals) has remanded the matter to the Assistant Collector as refund was rejected without issuing show cause notice.

3. The learned Advocate mentioned that the waste and scrap generated in their unit was not capable of being rolled; that the Assistant Collector had presumed, without there being any evidence on record, that it was a re-reliable scrap and it was not used for remelting; that such a finding cannot be sustained in absence of any evidence; that as per Note 6(a) to Section XV of the Tariff, which defines waste and scrap, there is no condition that for categorisation as waste and scrap, it should be useable only for remelting. Finally he relied upon the decision of the Supreme Court in L.M.L. Ltd. v. C.C.E., Kanpur, 1997 (94) E.L.T. 273 (S.C.) and Tribunal's final order dated 6-1-1999 in their own case wherein it was held that their products in question is required to discharge duty as off cuts under Heading 72.10 and is not waste and scrap as claimed by the Appellants.

4. Countering the arguments, Shri M.P. Singh, Learned D.R., submitted that process of generating off cuts does not bring into existence waste and scrap; the product obtained is sheet only and as Modvat Credit of duty paid on inputs was availed of, they have to discharge the duty liability under Rule 57F(1) of the Central Excise Rules as sheets only.

He relied upon the decision in Bajaj Auto Ltd. v. C.C.E., Pune -1995 (75) E.L.T. 382 (T) wherein Tribunal held that if the off cuts are useable sheet it cannot be termed as 'waste and scrap' and duty must be paid as sheet. Reliance was also placed on the decision in the case of Bharat Berg Ltd. v. C.C.E., Allahabad, 5. We have considered the submission of both the sides. We find that in the case of L.M.L. Ltd. supra the Apex Court has held that the off cuts would clearly answer to the expression 'scrap' contained in Tariff Item 72.10. The Tribunal, following the ratio of the decision, ordered, in the Appellants own case, vide final order dated 6-1-1999 in Appeal NDE/A 2663/92-B, that "the product in dispute is required to discharge duty as off cuts under Heading 72.10 and is not waste and scrap as claimed by the Appellants." Following the ratio of both these decision we hold that

the product in question is classifiable under Heading 72.10 of CETA and duty is to be discharged accordingly. If any amount of duty becomes refundable, the same has to be refunded to the Appellants in accordance with law and after considering the applicability of doctorine of unjust enrichment as per the decision of the Supreme Court in the case of Mafatlal Industries Ltd., 1997 (89) E.L.T. 247.

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