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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-24-2000

Reported in : (2001)(130)ELT668TriDel

Appellant : Sage Metals Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants filed this appeal against the order-in-appeal dated 14-7-1998 passed by the Commissioner of Central Excise (Appeals).

2. Brief facts of the case are that the appellants are engaged in the manufacture and export of electrical wiring accessories. As the appellants were exporting the final product, they were allowed to import the inputs without payment of duty. On 6-12-1995, the unit of the appellants was visited by the revenue officers and on verification of inputs, it was found that 11897.1 kg. of zinc alloy ingots was found short as compared to their statutory record. During investigation, it was found that zinc alloy was imported by the appellants without payment of duty for use in the manufacture of electrical wiring accessories, which are to be exported. This quantity of zinc alloy was neither cleared on payment of duty nor found to be used in the manufacture of final product. Therefore, the duty was demanded on this quantity and penalty of Rs. 30,000.00 was also imposed under Rules 9(2) and 173Q of the Central Excise Rules.

3. Ld. Counsel, appearing for the appellants, submits that the import of zinc alloy was made under various duty-free licenses and the export obligation has been carried out. Therefore, in such a situation, there is no justification for levying the duty or imposing the penalty. He, further, submits that the stock taking process was faulty as the ingots, in question, were not uniform in size and weight and the calculation in respect of shortage was made on estimate basis. He, therefore, prays that the appeal be allowed.

4. Ld. DR, appearing on behalf of the revenue, submits that on the date of visit of excise officers, when the shortage in zinc alloy was found, the appellants failed to show that they have fulfilled the export obligation under DEEC Scheme. He submits that the weighment was done in the presence of Shri P.G. Purushothman, Manager (Import & Export), who admitted the shortages. He, further, submits that since the goods, in question, are imported under DEEC Scheme on actual users condition, the appellants were duty-bound to keep the record and stock of imported inputs. He, therefore, prays that the appeal be dismissed.

6. In this case, the zinc alloy which was imported without payment of duty, to be used in the manufacture of electrical wiring accessories, are to be exported under DEEC. On the day of visit, the appellants failed to show that they had completed their export obligation under the scheme in respect of the goods, in dispute. As the weighment was done in the presence of Manager (Import & Export), who admitted the shortages, therefore the contention of the appellants that the weighment was done on estimate basis will not help the appellants. The adjudicating authority gave a specific finding that the stock of 11897.1 kg. of zinc alloy ingots found short, was out of the stock of 185.641 MT imported against QBAL No. P/W 3492475, dated 18-4-1995 and that against the said license, their export obligation was 168.76 MT after allowing the wastage of 10% as per the input output norms fixed by DGFT. The appellants produced a certificate dated 20-3-1997 by DGFT that the appellants have fulfilled the export obligation in respect of QBAL No. P/W 2492475, dated 18-4-1995. From this it is clear that on the date of visit i.e. 6-12-1995, the appellants had not fulfilled the export obligation in respect of this import.

7. In view of the above discussion, I find no infirmity in the impugned order. However, taking facts and circumstances of the case, the penalty imposed on the appellants is reduced to Rs. 15,000.00 from Rs. 30,000.00. The appeal is disposed of as indicated above.

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