

Digamber Foundry Vs. Commissioner of Central Excise

Digamber Foundry Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/17773

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-29-2000

Reported in : (2000)(119)ELT140TriDel

Appellant : Digamber Foundry

Respondent : Commissioner of Central Excise

Judgement :

1. In this case demand of duty of Rs. 13,57,144/- has been confirmed against the Applicants who are manufacturers of M.S. Bars and Rods on the ground that they were not eligible to the benefit of Notification No. 202/88-CE., dated 20-5-1988 since they purchased unusable rails, sleepers, fish plates, etc. (rail scrap) during auction from the Railways and used the same as raw material and the raw material was clearly recognisable as non-duty paid and that therefore the applicants should have paid appropriate duty on their final product 6 mm. Width Bars and Rods. The period in dispute is August, 1992 to February, 1994.

Penalty of amount equal to duty has also been imposed.

2. We have considered the submissions of both the sides. The issue on merits has been decided against the assessee by virtue of the Tribunal's decision in the case of Vivek Re-rolling Mills v. C.C.E. - 1994 (73) E.L.T. 660 (T) which has been followed subsequently in the case of Rehal Industrial Corporation v. C.C.E. - 2000 (36) RLT 493 (T).

In these decisions the Tribunal held that Bars and Rods manufactured out of old and unserviceable railway scrap are not covered by the Notification No. 202/88-CE. However, we agree with the Applicants that the demand is prima facie barred by limitation as the Applicants were under the bond fide belief, based upon the various circulars issued by the Central Board of Excise and Customs that used and rejected railway materials were to be treated as angles, shapes, and sections, that their final product made out of such railway materials were exempt from payment of duty in terms of Notification No. 202/88. We, therefore, dispense with the requirement of pre-deposit of duty and penalty and stay recovery thereof during the pendency of the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com