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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-04-2000

Reported in : (2000)(71)ECC89

Judge : J Balasundaram, A T V.K.

Appellant : Metal Tubes

Respondent : Cce

Judgement :

1. The issue involved in this appeal filed by M/s. Metal Tubes is whether the process undertaken by them for making Brass Barrels and Brass Liners amounts to manufacture in terms of Note 2 to Chapter 74 of the Schedule to the Central Excise Tariff Act and whether extended period of limitation is invokable for demanding Central Excise duty in facts of the matter? 2. Shri V. Lakshmi Kumaran, learned Advocate, submitted that the appellants make brass barrels and brass liners out of brass pipe/tubes purchased in auction conducted by Sugar Mills and Thermal Power Plants; that they heat up tube upto the temperature of 700C, soak them in Sulphuric Acid and thereafter in Nitric Acid in order to remove the impurities and other foreign materials present in the tubes, then the tubes are taken to tube pointing machine where the edges are pointed manually, finally the tubes are taken to straight benches wherein these are straightened, here the diameter of tube is increased to suit the requirement of the customer; that the tube is fixed on the straight bench so that it does not move when dye is inserted into the tube and pulled through the tube; that this process of pulling the dye through tube

is repeated till the desired diameter is achieved. The learned Counsel further mentioned that as per Note 2 to Chapter 74 "in relation to products of heading No. 74.11, the process of drawing or redrawing shall amount to manufacture"; that the Collector under the impugned order has confirmed the demand of Rs. 41,36,879 and imposed a penalty of Rs. 10,000 holding that the process undertaken by them amounts to process of redrawing of the pipes which is a manufacturing process as per Note 2. Me also mentioned that the process undertaken by the appellants is not the process of drawing or redrawing; that in the process of drawing or redrawing the dye is stationery and the object which is drawn or redrawn moves whereas in the case of the appellants the dye is inserted into the tube and pulled through the tube; that this process is the process of straightening which is not covered by Note 2 to Chapter 74. In support of his contention he referred to the meaning of expression 'drawing' as given in various dictionaries and technical books. According to McGraw-Hill Dictionary of Scientific and Technical Terms, drawing means, "Pulling a wire or tube through a die to reduce the cross section." According to the New Encyclopaedia Britannica, drawing is a process for forming sheet metal, tubing, and wire to obtain certain shapes and dimensions. The rod or bar of metal is pulled through a series of dies of decreasing diameter until the final shape is obtained. Finally he referred to Metals Handbook, IXth Edition, in which it is mentioned that in the drawing process the cross sectional area and/or the shape of rod bar, tube or wire is reduced through a die.

3. The learned Advocate emphasised that it is evident from these technical books that drawing essentially consists of pulling the pipe or tube through die in order to reduce the wall thickness and inner/outer diameter of the tubes whereas in the appellant's case the dies are pulled through the tube in order to get the desired shape for brass liner or barrels and consequently this process cannot be said to be drawing. He also submitted that the brass barrels manufactured by them are not used for conveying the liquid and as such are not pipes or tubes classifiable under heading 74.11; that the final products are exempt under Notification No. 111/88, since they are used as parts of agricultural equipments; that one of the final product involved is liner and the same is used as spray pump. Finally the learned Advocate submitted that the entire demand is barred by limitation as the show cause notice was issued on 24.10.96 for demanding the duty for the period from

November 1991 to January 1996; that the learned Commissioner has invoked the extended period of limitation holding that the appellants have never elaborated the manufacturing process and they had mislead the Department under their letters dated 9.1.92 and 12.7.93 by intimating that they were not engaged in the drawing or redrawing of copper pipes and tubes. He mentioned that after insertion of Chapter Note 2 to Chapter 74, Suptd. of Central Excise, Jagadhari under letter dated 10.10.91, directed the appellants to take out the licence and not to clear the goods without paying the duty as they were engaged in the drawing and redrawing of copper/brass tubes and pipes falling under heading 74.11 of the Tariff; that the appellants under their letter dated 10.10.91 itself addressed to the Suptd. intimated that they did not draw or redraw any kind of old or new tubes but only manufacture brass barrel pipes for use as agricultural implements and these barrels fall under heading 84.24 of the Tariff which is wholly exempt under Notification No. 141/88; that Range Suptd. visited their factory and studied the process undertaken by the appellants and sent a letter dated 16.10.91 to the appellants in which it was mentioned that they were engaged in drawing or redrawing of old brass pipes and tubes and were directed to take Central Excise licence and to fulful formalities.

He further mentioned that one of the product i.e. parts of pumps used for agricultural implement would qualify for exemption under Notification No. 111 /88 and they would allow to clear the same at nil rate of duty. The learned Counsel mentioned that the appellants thereafter took out a Central Excise licence; that the appellants sent a letter dated 9.1.92 to the Suptd. in which they explained the process undertaken by them; that thereafter Range Suptd. under letter dated 12.2.92 directed them to submit the necessary reports and maintain all the prescribed records and inform the value of clearances of brass barrels and copper tube and pipe made from 27.9.91 to 31.1.92. He further mentioned that under letter dated 12.7.93 addressed to the Range Suptd., the appellants surrendered their registration certificate contending that their product is fully exempt for excise duty under Notification No. 111/88; that the Suptd., after verifying the facts regarding any dues against them and whether they were having any stock of excisable products, accepted the surrender of registration certificate under letter dated 16.8.93. Learned Counsel contended that thus right from 1991 till July, 1993

when the registration certificate was surrendered, the Department was duly made aware of the process undertaken by the appellants and after having satisfied themselves that the process undertaken by them does not amount to drawing or redrawing, the department accepted the surrender of their registration certificate and accordingly larger period as provided in proviso to Section 11A(1) of the Central Excise Act is not invokable in the present matter.

4. Countering the arguments, Shri R.K. Sharma, learned SDR submitted that expression 'Straightening' has not been defined in technical books; that the process undertaken by them amounts to drawing only. He pointed out them it is mentioned in the New Encyclopaedia Britannica that tubes are sometime drawn through a die to reduce the inside and outside diameter; that this shows that the process can also work in reverse direction and drawing can be used for increasing the diameter of the product. He also refers to Metals Handbook in support of his contention that instead of the product the die may be moving. According to Metals Handbook, in drawing with a moving mandrel the mandrel travels at the speed at which the section exits the die. This process, also called ironing, is widely used for thinning the walls of drawn cups or shells. The learned SDR also submitted that thinning of walls amounts to increasing the volume of the material; that it is not necessary that expansion of the volume can only be horizontal; that expansion can be diameteric expansion also. He also referred to the preparation for drawing as given in Metals Handbook according to which preparation for drawing involves heat treatment, surfact preparation and pointing and contended that all these preparations are also undertaken by the appellants before the tube/pipes and drawn into brass barrels or liners and as such the process undertaken by them amounts to manufacture in terms of Note 2 to Chapter 74 of the Tariff. The learned SDR further mentioned that admittedly their product is used in Hand Pumps which are used for drawing the water from the ground, and therefore, it cannot be contended by the appellants that the pipes are not used for conveying the water, that accordingly their product is classifiable under heading 74.11 of the Tariff.

5. Regarding the issue of limitation the learned SDR reiterated the findings of the Commissioner as contained in the impugned order and emphasised that the appellants all the time maintained that the process undertaken by them does not

amount to drawing which was not correct and they did not maintain the statutory records and did not clear the goods on payment of duty; that they also did not disclose the process of straightening undertaken by them, and as such they had suppressed the material facts from the department and accordingly larger period was invokable.

6. We have considered the submissions of both the sides. The entire demand is beyond the normal period of 6 months as the show cause notice was issued on 24.10.96 covering the period from November, 91 to January, 1996. We agree with the learned Counsel that the demand is hit by time limit as specified in Section 11A of the Central Excise Act.

The larger period of limitation is not invokable in view of the various correspondence exchanged between the appellants and the department since the insertion of Note 2 to Chapter 74 of the Central Excise Tariff. It cannot be claimed by the department that it was not aware of the process undertaken by the appellants as the first letter dated 10.10.91 was written by the Range Suptd. himself in which it was clearly mentioned that the appellants were enaged in the drawing or redrawing of copper/brass tube and pipe which has become dutiable with the enactment of Finance Bill, 1991-92. We also observe that the appellants right from their first letter dated 10.10.91 has maintained that they did not draw or redraw any kind of old or new tubes or pipes.The learned Commissioner has given his findings that the appellants had misled the department by their letters dated 9.1.92 and 12.7.93. A perusal of letter dated 9.1.92 reveals that the appellants had given the process undertaken by them right from the stage of purchase of the old pipes and tubes. We, further, observe that the Range Suptd. had visited their premises and studied the process undertaken by the appellants, and therefore, the question of misleading the department does not arise. Finally, the department accepted the surrender of registration certificate of the appellants and before accepting such surrender the department should have examined all the aspects of the process undertaken by the appellants to see whether any excise duty was chargeable or leviable or not. We, therefore, hold that the entire demand is time barred and the appellants succeeds on the question of time limit itself. We, therefore, set aside the impugned order and allow the appeal filed by the

appellants on the aspect of time limit alone without going into the question, whether the process undertaken by the appellants amounts to drawing or redrawing.

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