

Desh Rolling Mills Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-03-2000

Reported in : (2000)(122)ELT481TriDel

Appellant : Desh Rolling Mills

Respondent : Commissioner of Central Excise

Judgement :

1. In these four appeals, filed by four appellants against four Order-in-Appeals, passed by the Commissioner (Appeals), the Common issue involved is whether exemption under Notification No. 1/93-C.E., dated 28.02.1993 and Notification No. 214/86-C.E. dated 02.04.1986 is available to the goods manufactured by them.

2.1 Briefly stated the facts are that all the four Appellants manufactured untrimmed sheets/circles of copper, copper alloys on job work basis which were removed by them without payment of excise duty.

The demand for duty of excise was confirmed by the Assistant Commissioner and Commissioner (Appeals). However, on appeal the Appellate Tribunal, in the case of Aggarwal Rolling Mills v. CCE, New Delhi - 1997 (93) E.L.T. 615 (T), remanded the matter to the adjudicating authority for de novo consideration in the light of the observations made and the law.

2.2 The Assistant Commissioner re-adjudicated the matters and confirmed the demand of duty against all the Appellants, holding that the condition specified

under Notification No. 214/86 has not been complied by the supplier of raw material; that the Appellants had made no submission regarding eligibility Notification No. 1 /93, as amended; that their clearances of goods had crossed Rs. 75 lakhs before 28.02.1994 and they had crossed the limit of clearance of Rs. 200 lakhs in the preceding financial year. The Assistant Commissioner also relied upon the decision in the case of Jina Bakul Forge Pvt. Ltd v. C.C.E., Bangalore, 1997 (93) E.L.T. 373 (T). On appeal, the Commissioner (Appeals) confirmed the demand of duty and imposition of penalty (though quantum of both duty and penalty was reduced in respect of M/s.

Desh Rolling Mills), holding that the conditions specified in Notification No. 214/86 were not satisfied inasmuch as the supplier of raw material had not been paying duty on final products manufactured by the supplier out of goods manufactured on job basis by the Appellants; that the duty liability is on the manufacturer of the goods.

3. Shri J.S. Aggarwal, Id. Advocate, submitted that the Appellants manufacture Hot Rolled Untrimmed Sheets/Circles of Copper/Copper alloys out of the raw-materials supplied by the principal manufacturer; that the Adjudicating Authority has gone beyond the terms of the remand order of the Appellate Tribunal; that in para 21 of the Tribunal's Order in Aggarwal Rolling Mills (supra), Tribunal has observed that "the benefit of the Notification No. 214/86 could not be denied to the appellants from the period it came into force and they had opted for the same subject to the fulfilment of the conditions and the procedure prescribed therein. The duty liability, if any, which may arise in the case of non fulfilment of the conditions prescribed in para 2 would lie on the supplier(s) of the raw material or semi-finished goods as the responsibility has been, explicitly cast on him as a principal manufacturer. The Id. DR is correct in pointing out that in normal course the responsibility under Excise Law is on the manufacturer (incl. Job workers), but once the Govt. has chosen to depart from this principle explicitly and made provisions to take care of the resultant situation by making a specific provision in the Notification No.214/86, it is not the case law cited by the Id. DR but the plain language of the Notification which will have to be taken note of. "The Id. Advocate, further, submitted, that in spite of these clear observations by the Tribunal in the remand order both

Adjudicating Authority and lower Appellate Authority have confirmed the demand against the Appellants for non-fulfilment of conditions specified in Notification No. 214/86 following the decision in the case of Jina Bakul Forge Pvt. Ltd v. CCE, Belgaum -1997 (93) E.L.T. 373; that in any case facts in present matters are distinguishable inasmuch as in that case the material which was received by Job worker was not covered by Rule 57F or Notification No. 214/86 challans; that in the present matters the goods for job work were being received under Proper Challans duly authenticated by the Department. He, further, mentioned that the Appellants have even surrendered their L-4 licences as the product manufactured by them was exempt from payment of Central Excise duty, under Notification No. 1/93 as amended by Notification No. 59/94 dated 01.03.1994. The Id. Advocate also submitted that intermediate goods coming into existence during the process of manufacture would not be subject to duty unless they satisfy the test of marketability as held by the Supreme Court in the case of CCE, Baroda v. United Phosphorus Ltd., 2000 (38) RLT 239 (SC); that it has been held by the Tribunal in the case of Lohia Sheet Products v. CCE, Ghaziabad - 1999 (35) RLT 453, that untrimmed cover sheets are not liable to duty as no evidence of their marketability had been produced by the Department.

The Id. Counsel, therefore, contended that the products manufactured by the Appellants are not liable to excise duty, being not marketable.

Finally, the Id. Advocate referred to the clarification given by the Principal Collector wherein it was clarified that product job rolled under Rule 57F(3), Notification No. 214/86 are not to be charged to excise duty in the hands of Job worker provided proper procedure is adopted as provided in the Central Excise Rules/relevant Notification.

He mentioned that the clarification given by the Department is binding on the Central Excise officers and reliance was placed on the decision in the case of Paper Products Ltd. v. CCE -1999 (112) E.L.T. 765 (S.C.).

4. Countering the arguments, Shri M.P. Singh, Id. DR, submitted that Notification No. 214/86 grants an exemption to the goods manufactured in a factory as a job work on fulfilment of the conditions specified in the Notification; that the job worker

has not been absolved from payment of Central Excise Duty on the goods manufactured by him on job work basis; that under the Central Excise Law the duty is chargeable only from the manufacturer of excisable goods; that Rule 57F(2) of the Central Excise Rule and Notification No. 214/86 are two different provisions prescribing different procedures and these are not to be (intermingled; that principal manufacturer issued the challan under Rule 57F(2) for which the appellants have not kept any account at all; that they have treated the raw-material as having been received under Notification No. 214/86 regarding which the supplier of the raw-material had not given any undertaking to the Department. He, further, submitted that as the appellants themselves were paying Central Excise Duty on the impugned products earlier, it goes to show the marketability of the impugned Products. He, further, mentioned that as the supplier of the raw-material is availing exemption under Notification No. 1/93-C.E and not availing at all the credit of the duty paid on the inputs, the question of clearing the raw-material under Rule 57F(2) does not arise; that the requirement of Rule 57F(2) have also to be complied by them and the Appellants were not keeping any records as well as the prescribed register regarding the minutes of the meeting with the Principal Collector, relied upon by the Id.Advocate for the Appellate. The Id. DR submitted that it was clearly mentioned in the clarification that the procedure prescribed under the Rules or the Notification has to be followed and as such the Adjudicating Authority has not in any way done anything contrary to the clarification; that, further, the clarification does not contain any new things as it only repeats what is mentioned in Notification No.214/86.

4. In reply the Id. Advocate submitted that the challan, for sending the goods under Rule 57F(2) and under Notification No. 214/86 is same; that Notification No. 178/88, which prescribed Central Excise duty @ Rs. 1,4000 per tonne in respect of sheets and circle in untrimmed conditions, was rescinded by Notification No. 64/94 dated 01.03.1994.

He finally mentioned that once the challan under which the raw-material was received was duly authenticated by the Central Excise Department, the appellants have not to look for any other thing; that the Tribunal has clearly held in Aggarwal Rolling Mills case that it is for the supplier to comply and the Department to verify

whether the conditions mentioned in para 2 of Notification No. 214/86 had been duly fulfilled; that no appeal has been filed by the Department on this aspect and order has become final and is to be implemented. Reliance was placed on the decision of the Larger Bench of the Tribunal in the case of Surgichem and Ors. v. CCE, Rajkot, 2000 (117) E.L.T. 564 (Tribunal) - 2000 (37) RLT 842.

5. We have considered the submissions of both the sides. The appellate Tribunal in Aggarwal Rolling Mills has held that untrimmed sheets and circles of copper/copper alloys are excisable products falling under Heading 74.20 of the Schdeule to the Central Excise Tariff Act and as such it is not open to the Id. Advocate for the appellants to raise the arguments that untrimmed sheets/circles are not marketable in proceeding before us. We observe that the Tribunal had remanded the matters to the Adjudicating Authority for re-adjudication in the light of the observations made by them and the law. The Adjudicating Authority has re-adjudicated the matter following observations of made by the Tribunal in the Remand Order and in accordance with law. It has been specifically mentioned by the Adjudicating authorities that the benefit of the Notification No. 1/93 was not available to the appellants as they had crossed the value of clearances of Rs. 75 lakhs up to 28.02.1994 and as such the benefit of exemption was not available for the period of March 94. The Adjudicating Authority has given, further, findings that exemption under Notification 1/93 was not available for the financial year 1994-95 as the aggregate value of clearance, has crossed Rs. 200 lakhs limit specified in the Notification during the preceding financial year. These findings have not been controverted by the Id. Advocate for the appellants.

Notification No. 214/86 provides exemption to the goods manufacture in a factory as a job work and used in or in relation to the manufacture of final product on which duty of excise is leviable whether in whole or in part subject to the condition that supplier of the raw materials gives an undertaking to the Assistant Collector of Central Excise, having jurisdiction over the factory of the job worker, that the goods shall be used in or in relation to the manufacture of the final products in his factory; the said supplier produces evidence that the goods have been so used and he undertakes the responsibilities of discharging the liabilities in respect of duty leviable on the finished products. We find that no evidence has been brought

on record by the Appellants to prove that the supplier of the raw-material had supplied the materials to them under the provisions of Notification No. 214/86.

In view of absence of any material to this effect, it is not open to the Appellants to claim that they were working under the provisions of Notification No. 214/86. The copies of challans brought on record by the Appellants only refer to the movement of excisable goods under Rule 57F(2). In view of this, the reliance placed by the Appellants on the observation of the Tribunal in respect of Notification 214/86 in the remand order is not tenable. We also observe that the Tribunal directed the Adjudicating Authority to decide the matter in the light of the observations and also according to the law. Notification No. 214/86 nowhere provides that the supplier of the raw material will be liable to pay the duty on the goods manufactured as a job work. Para 2 of the Notification No. 214/86 speaks of the liability of the supplier for discharging the duty leviable on the finished products and not on the goods manufactured on job work basis. The Adjudicating authority has rightly relied upon the decision in the case of Jina Bakul Forge Pvt.

Ltd (supra). Accordingly, we uphold the demand of Central Excise Duty as confirmed by the Commissioner (Appeals) in the impugned Orders.

However, taking into consideration all the facts and circumstances of the case, we reduce the penalty imposed on all the appellants as under :

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