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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-25-2000

Reported in : (2000)(72)ECC123

Appellant : Universal Containers

Respondent : Collector of Central Excise

Judgement :

1. Appellants are manufacturers of metal containers. Metal sheets, coils and strips are the inputs for such manufacture. Certain amount of metal waste arises in the course of manufacture of metal containers.

Whether such waste would be eligible for exemption under Notification 91/88, dated 1-3-1988 and Notification 171/88, dated 13-5-1988 is the issue raised in this appeal. When the case went before a Division Bench of two Members for hearing on 7-4-2000, that Bench referred this case to a Larger Bench on account of conflict between the decisions in the case of CCE v. Universal Containers - 1999 (108) E.L.T. 573 and Amar Steel Container Corporation v. CCE - 1999 (35) RLT 805. Accordingly, this Larger Bench has been constituted to consider the issue.

2. Exemption under notification 91/88, dated 1-3-1988 is worded as under: "...The Central Government hereby exempts goods of the description specified in column (2) of the Table hereto annexed and falling within Chapters 72, 73 or 84 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)...subject to the intended use, or the conditions, if any, laid down in the corresponding entry in

column (4) thereof." 2.1. The conditions relevant to the appellant's case are contained in sub-clause under column (4) of serial number 3 of notification 91/88.

Serial number 3 is reproduced below for ease of discussions.

"Provided that such waste and scrap (other than mill scale) have arisen from (i) goods covered by Chapter 72 (excluding slotted angles and slotted channels, and goods and materials of Chapter 72 or 73 obtained by breaking up of ships, boats and other floating structures); sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements; welded angles, shapes and sections of iron or steel; rails, sleepers (cross-ties); tubes, pipes and hollow profiles of iron or steel; cast articles of iron or steel; bottom stools, staring or poking rods, splash plates and throughts; and ingot moulds falling under heading No. 84.54 on which duty of excise leviable under the said Schedule or the additional duty leviable under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), as the case may be, has already been paid, but the credit of such duty has not been taken under Rule 56A or 57A of the Central Excise Rules, 1944; or (ii) ail goods, falling within the said Schedule, other than the goods specified in Clause (i) above and goods and materials of Chapter 72 or 73 obtained by breaking up of ships, boats and other floating structures, - 3. The learned Counsel for the appellant submits that Clause (ii) under column (4) is applicable to their case and not Clause (i) as held in the impugned order. He explained that metal sheets, coils and strips which are received as input are first cut to required lengths and shapes for the manufacture of parts of metal containers. The parts of a metal container are body and lids (top and bottom). Waste arises either during the manufacture of body, or lids, from such cut pieces of sheets and coils or strips. He stated that for the manufacture of body of the container, sheet, after cutting to size, is folded and welded. Learned Counsel stated that, at times, during welding, folded sheets get damaged on account of holes developing at some welding points. In such cases, those bodies become unfit for use in metal container. They are, therefore, discarded. Similarly, circles are punched out from square pieces of strips for making lids. During this process certain portion of the square metal sheet gets discarded leading to creation of waste.

Further, during manufacture into lids some of the punched out circles also get damaged resulting in creation of waste. Learned Counsel argued that waste in these cases are not arising directly "from goods covered by Chapter 72" particularly, the circles which are damaged during conversion to lids and sheets damaged during welding into bodies of metal containers. Instead they are manufacturing waste emerging during the manufacture of metal containers. He submitted that sub-clause (ii) of serial number 3 covered "all goods, falling within the said (Central Excise) Schedule". Therefore, these wastes are eligible for exemption under sub-clause (ii).

4. Learned Counsel also submitted that the decision of the Tribunal in their own case reported in 1999 (108) E.L.T. 573 lays down the correct law. He referred in particular to the following observation of the Tribunal : "The impugned goods arise from manufacture of metal containers which were taxable under the Heading 8312.12 at the metals too. This heading is not specified at Clause (i) of the Table against Sl. No. 3 of notification and therefore such scrap would be entitled to exemption. Since the appellants are working under Modvat scheme the wastes arising from the manufacture of final product of metal containers can be either destroyed, exported or removed for home consumption on payment of duty. Notification No. 54/86 prescribes rate of duty for scrap classifiable under heading 72.03.20".

He also submitted that the later decision of the Tribunal as reported in 1999 (35) RLT 805 has been rendered without taking into account the earlier decision.

5. Learned Departmental Representative submitted that the waste' that arises during the process of manufacture of metal containers arises from the input, namely, metal coils, sheets and strips, and not from any manufactured product. He also submitted that the notification granted exemption to such waste only if Modvat credit had not been availed of on the inputs. The intention was not to grant exemption to waste and scrap arising from the manufacture of any particular product, viz. metal container. He submitted that this is clear from the wordings of different headings in the notification. Wording of Sl. No. 2(ii) is "arising in the course of manufacture of foundry grade iron", while the wording of Sl. No. 3 is

"Provided that such waste and scrap (other than mill scale) have arisen from - (i) goods covered by Chapter 72...or Learned Departmental Representative submitted that the punched out circles and the folded sheet had not become part of metal container at the stage of their turning into waste. They are only metal pieces.

Therefore, they could only-be treated as waste which has arisen from the primary material, that is, sheets, coils, strips etc. Learned Departmental Representative also drew our attention to a third decision (other than the two decisions referred to in the referal order) of the Tribunal, namely, Guest Keen Williams Ltd. v. CCE, Bombay-III - 1997 (93) E.L.T. 218, which had been rendered prior to the decision in the appellant's own case. He stated that it would appear that the decision in the appellant's case was rendered in ignorance of this earlier decision and therefore cannot become valid precedent. Learned Departmental Representative also stated that the decision in Guest Keen Williams Ltd. has correctly analysed the legal position. He drew our attention in particular to the following passage in para 5.

"We find that the expression used is "arisen from". The inputs were the steel sheets and the waste and scrap had arisen from the said steel sheets and it could not be said that the waste and scrap had arisen out of waste and scrap during the course of manufacture of the final products." Learned Departmental Representative also submitted that the decision of the Tribunal in Amar Steel Container Corporation (supra) is in conformity with the earlier decision in Guest Keen Williams Ltd. (supra).

6. We have perused the records and have considered the submissions. We find that the manufacture of metal container is a process of cutting, punching, folding and welding metal pieces from sheets, coils and strips. Waste arises at each one of the stages. Waste is arising from sheets, coils and strips and not from any manufactured goods like metal containers or parts. Accordingly, we are of the view that the appellant's case would be covered by Sub-clause (i) of Sl. No. 3, that is, waste and scrap arising from goods falling under headings or sub-headings 7201 to 7213 and not from goods falling under any heading of the said Schedule under Sub-clause (ii), as contended by the appellant. In the present case, appellants

have taken Modvat credit of the duty paid on the inputs. This means such waste and scrap is ineligible for exemption under Notifications 91/88 and 171/88. These notifications specifically stipulate that if Modvat credit had been taken on the input, exemption will not be available on waste and scrap.

We are, therefore, in agreement with the view expressed by the Tribunal in the case of Guest Keen Williams Ltd. Accordingly, we affirm the view taken in that decision and in Amar Steel Container Corpora-lion and state that the view taken by this Tribunal in the appellant's own case does not lay down the correct law. The reference is answered accordingly.

7. In the view we have taken in the reference, the appeal fails and is rejected. Department is entitled to realise the duty on the waste and scrap from the appellant. We are told that they have executed bond as directed by the High Court of Bombay. Department may take appropriate action for recovery of the money.

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