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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-29-2000

Reported in : (2001)(130)ELT99TriDel

Appellant : Mohan Steels Ltd.

Respondent : Commissioner of Central Excise

Judgement :
1. The issue involved in this Appeal, filed by M/s. Mohan Steels Ltd., is whether the exemption from payment of Central Excise duty in terms of Notification No. 202/88-C.E., dated 20-5-1988 is available to wire rods & bars of iron and steel manufactured by them out of the old M.S.Scrap containing broken pieces of bars, angles, old machinery parts, old automobile parts, old oil engines etc.

2. Shri Shiv Das, ld. Advocate, submitted that the Appellants manufacture Wire rods/bars, etc., falling under Chapters 72 and 73 of the Schedule to the Central Excise Tariff Act; that one of the raw materials used by them in the manufacture of these products was re-rollable material in the form of scrap, purchased by them from kabadis; that the kabadis used to purchase the scrap in auction conducted by different Government departments such as Defence, Railways, integrated Steel plants, etc.; that since the re-rollable material was purchased from the traders, they considered them to be duty paid; they were clearing the finished product claiming the exemption under Notification No. 202/88-C.E.; that according to the Explanation to Notification, all stocks of inputs in the country excepting such stocks as are clearly recognisable as being non duty paid or charged to nil rate of

duty shall be deemed to inputs on which duty has already been paid. He, further, submitted that show cause notice dated 1-12-1994 was issued to them for demanding duty of excise for the period from March, 1993 to February, 1994 on the finished products on the ground that the M.S. Scrap was consisting of broken pieces of angles/sections etc., which was not arising during the course of manufacture and had arisen out of wear and tear and had not suffered any excise duty. He mentioned that there is no definition of 'Re-rollable material' in the Central Excise Tariff; that if the view of the department is to be accepted, the notification ought to have made use of the expression "Waste and Scrap" and not Re-rollable material': that to take care of such a situation, Notification No.202/88 was amended with effect from 1-3-1992 to include re-rollable material as an input; that the Tribunal in Vivek Re-Rolling Mills v.CCE, Chandigarh, 1994 (73) E.L.T. 660 (T) held that rejected railway material old and used rails, wheels/axles are to be treated as old and used re-rollable scrap.

3. He, further, submitted that as the angles/sections continue to be angles/sections after use, they retain their duty paid character and as such the Appellants are eligible to avail of exemption under Notification No. 202/99-C.E. (sic) that the entire demand is time barred as extended period of limitation is not invokable; that the impugned Order sets outs in great details the views expressed by the various Commissionerates on the eligibility of old used and unserviceable materials as inputs for the purpose of identically worded predecessor Notification No. 208/83-C.E., dated 1-8-1983; that the Commissioner had also set out the practice followed by the Kanpur Commis-sionerate wherein such old & used re-rollable materials were considered as inputs for the purpose of Notification No. 202/88-C.E.; that as per the impugned Order, views expressed by the Kanpur Commissionerate were endorsed by Madurai and Belgaum Commissionerates; that it is thus evident that even among the Department, various Commissionerates have been holding divergent views regarding the coverage of old and used items as inputs for the purpose of the said Notification and in such a situation, longer period of limitation can hardly be invoked. He emphasised that the ld. Commissioner himself has opined in the impugned Order that the old & used goods do not loose their duty paid character and there was practice in Kanpur Commissionerate to treat them as duty paid; that in view of this it cannot now be said that there was suppression of

facts by them. The ld.Advocate referred to the classification list for 1992-93 wherein the benefit of Notification 202/88 was claimed by them and mentioned that they were also informing the Range Officer about the receipt of re-rollable material (He referred to letter dated 12-3-1993 at page 32); that the Range Officer, under letter dated 8-9-1993 informed them that they need not file such intimations.

4. Countering the submissions, Shri S.P. Rao, ld. DR submitted that as the benefit of the exemption contained in the Notification is availed of by the Appellants, the onus to prove that the inputs are duty paid is on the Appellants; that the inputs, which are admittedly old and used angles/section etc., do not attract any Central Excise Duty after they have been used and are sold in auction. Reliance was placed on the decision in the case of CCE, Meerut v. Electro Steel Castings Ltd., 1999 (114) E.L.T. 243, wherein it was held that the discarded items are not the product of manufacturing process; they are not excisable. He also placed reliance on the decision in the case of Indian Plastics Ltd. v. CCE, Bolpur - 2000 (70) ECC 242 (T) in which the Larger Bench of the Tribunal referred to the decision in the case of Machine Builders v. CCE - 1996 (83) E.L.T. 576, wherein it was held that the correct view is that the words "inputs are clearly recognisable as being non duty paid comprehend all inputs on which it is patent that duty has actually not been paid for any reason i.e. rate of duty is stated to be nil rate in the Schedule to the Tariff Act, or the inputs are wholly exempt from duty or for any other reason. "The ld. DR also mentioned that the Collector has given a much wider perspective in the impugned order, but the views of the Commissionerate are reflected in the show cause notice issued to the Appellants; that queries have been made only after issue of the show cause notice; that the declaration made by the Appellants has no bearing on the duty paid/non duty paid character of the inputs; that there is no mention in the classification list that the inputs used by them are bazar scrap; that the fact of using 'Kabadi Scrap' was known only to the Appellants which had not been disclosed by them to the Department and accordingly larger period of limitation is invokable.

5. In reply the ld. Advocate submitted the Collector might have made his mind at the time of issuing the show cause notice but he was not sure about the non-duty paid nature at the time of deciding the matter; that had the Department asked

them to reveal the nature of the inputs, they would have given the invoices to the Department; that in the present matter the Department has changed its opinion and as such the larger period of limitation will not be applicable.

6. We have considered the submissions of both sides. As far as the eligibility of the material like old and used. Railway materials is concerned, the issue has been settled by the Appellate Tribunal in Vivek Re-rolling Mills v. CCE, Chandigarh, 1994 (73) E.L.T. 660 that such unserviceable materials would be treated as old and used re-rollable scrap. The Collector has given his clear findings in the impugned Order that "it is not disputed that old and used re-rollable material of iron or Steel was purchased by the party from the Kabaries, which has arisen out of natural wear and tear and not on account of manufacturing activities. This fact has been deposed by the suppliers (Kabaries) in their various statements (RUD 4 referred to), wherein they had stated that they had never purchased duty-paid mild steel scrap from any factory and the scrap supplied to M/s. Mohan Steels Ltd. was not chargeable to Central Excise duty." One of the condition of the Notification No. 202/88-C.E. is that the final products are made from specified goods on which the duty of excise leviable under the Schedule to the Central Excise Tariff Act has already been paid. The Appellants have not brought any evidence on record to show that the inputs were duty paid. The evidence brought on record by the Department has not been controverted. The finding of the Collector as to the non-duty-paid character of the goods has not been rebutted by the Appellants. The inputs used by them were purchased from Kabaries who in turn purchased the same in auction conducted by different Government departments. Such goods have, therefore, not suffered any excise duty at the time when these were sold by various Govt. Departments in auction. The ratio of the decision in the case of Electro Steel Castings Ltd., supra, is squarely applicable to the facts of the present matter. In that case the Respondents had procured old and used scrap of iron and steel from the open market consisting of cycle parts, agricultural equipments, old household utencils and other like items. The Tribunal held that deemed Modvat credit was not available to the Respondents in absence of any evidence that at any stage Central Excise Duty had been paid on the material. Accordingly, we hold that the Appellants are not eligible for exemption from payment of duty in respect of final products manufactured by them under Notification No. 202/88-C.E.

as the condition specified in the Notification has not been complied with.

7. The Collector has held that the extended period of limitation is invokable as the Appellants, while submitting the information, had not disclosed the fact that the old and used material had arisen out of wear and tear without undergoing any conscious manufacturing activity.

In the classification list for 1992-93, the Appellants have not disclosed the nature of inputs. The information about the nature of inputs was only known to the Appellants and the availability of exemption was dependent on the duty paid character of the goods and accordingly the same should have been disclosed by the Applicants. In this regard, we agree with the submissions of the ld. DR., that the fact, which was known only to the Appellants, should have been disclosed while filing the classification list. Similarly the intimation of receipt of materials did not contain the specific information. The discussion made by the Collector about making reference to the Board and views expressed by various Commissionerate does not take away the fact of suppression of vital information which was known to the Appellants. There cannot been any presumption as to the duty-paid character of the inputs even if the inputs are considered to be covered by the description of the goods specified in the Notification. Accordingly, we hold that larger period of limitation is invokable in the present matter. The appeal is thus rejected.