Cce Vs. Overseas Trading Corpn.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-03-2000

Reported in : (2001)(95)LC298Tri(Delhi)

Judge : A T V.K, P Chacko

Appellant : Cce

Respondent : Overseas Trading Corpn.

Judgement :

1. The issue involved in present appeal, preferred by Revenue, is whether excise duty is leviable on untrimmed copper sheet manufactured by M/s. Overseas Trading Corporation.

2. M/s. Overseas Trading Corporation have, under their letter dt.

3.10.2000, requested to decide the matter as per Cross-Objections filed by them. We, therefore, heard Shri M.P. Singh, Ld. D.R. and perused the records. The Ld. D.R. submitted that the Assistant Commissioner, under Adjudication Order No. 22/CE/96 dt. 7.2.1996, ordered that sheets and circles of copper and alloys in untrimmed condition, falling under heading 74.09 of the Schedule to the Central Excise Tariff Act, are chargeable to duty as the final product i.e. sheets and circles in trimmed condition are cleared at nil rate of duty under Notification No. 135/94-CE, dt. 27.10.1994; that the Commissioner (Appeals), under the impugned Order, set aside the Adjudication Order relying upon the decision in the case of M/s.

Lohia Sheet Products v. CCE 1999 (35) RLT 454 (CEGAT) : 2000 (89) ECR 130 (T). He further submitted that untrimmed sheets and circles are chargeable to excise duty as these are marketable. He relied upon the decision in the case of Agarwal Rolling Mills v. CCE, New Delhi, mentioned that the Appellants were clearing the untrimmed sheets and circles which goes to show the marketability of the product; that as the product is not unstable, it is capable of being brought to the market for being bought and sold. He distinguished the decision in the case of Lohia Sheet Products by mentioning that the said decision was given as no evidence has been placed on record to prove that untrimmed sheets are marketable and since marketability of these goods is not proved, therefore, they will not be liable to duty." He finally contended that it is evident from the facts in the case of Agarwal Rolling Mills, the impugned goods are being sold in the market.

3. The Respondents have mentioned in their Cross objections that in their case untrimmed sheets/circles were not marketable as these became marketable only after by further processing of cold rolling (trimming); that no evidence was placed on record by the Department to show that untrimmed sheets/circles were marketable or even capable of being marketed. They placed reliance on the decisions in Bhor Industries v.CCE 1998 (110) ELT 12 (SC) : 1998 (77) ECR 444 (S.C.), Union of India v. Delhi Cloth General Mills Co. Ltd. and and Nirlon Synthetic Fibres and Chemicals Ltd. v. CCE 1996 (15) RLT 675 (SC) : 1996 (66) ECR 209 (SC).

4. We have considered the submissions of both the sides. It is settled law that a commodity which is sought to be made liable to excise duty must be a commodity that is marketable. The Ld. DR has rightly pointed out that the decision in Lohia Sheet Products was given by the Tribunal for want of evidence about the marketability of the untrimmed copper sheets. The Revenue has shown from the facts in the case of Agarwal Rolling Mills that the untrimmed sheets/circles of copper were being sold and as such are capable of being brought to the market for being bought and sold. Similar views have been expressed by the Tribunal in the case of Everest Metals v. CCE, Delhi 2000 (40) RLT 273 (CEGAT) wherein it was held that mere fact that the entire production is captively consumed does not mean that the product is non marketable.

Accordingly we set aside the impugned Order and allow the appeal filed by the Revenue. The cross objections filed by the Respondents are, thus, rejected.