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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-11-2000

Reported in : (2001)(127)ELT402TriDel

Appellant : Devidayal Non-ferrous Indus. (P)

Respondent : Commr. of C. Ex.

Judgement :
1. In this appeal, filed by M/s. Devi Dayal Non-Ferrous Industries Pvt.

Ltd., the issue involved is whether the benefit of exemption under Notification No. 69/86-CE dated 10-2-1986 under Sl. No. 1(ii) is available to the paper insulated copper winding wire, manufactured by them.

2. Shri Jawaharl Lal, learned Advocate, submitted that the Appellants manufacture copper winding wires; that paper is covered on the copper wire so that insulation is achieved; that such paper covered wire is wound around the relevant part of transformers/dynamoes; that the department has not disputed that the impugned goods are winding wires; that Sl. No. l(ii) of Notification No. 69/86-CE provides 15% duty in respect of winding wires made of copper falling under heading 85.44 of the Schedule to the Central Excise Tariff Act; that the department has denied them the benefit under the said Sl. No. and has held that the impugned product would be covered by Sl. No. 4 of the Notification which refers to 'insulated wires/cable' attracting a higher rate of duty; that mere insulation of winding wire by paper does not change the character of the winding wire being winding wire and

as such the impugned goods would be covered by the Sl. No. l(ii) of the Notification. He also submitted that the demand is time barred as the show cause notice was issued on 3-5-1991 demanding the duty for the period from 1-4-1986 to 28-2-1987; that in their classification list No. 1/86-87 effective from 11-4-1986 they had described the product as "paper covered copper winding wire" and this classification list was approved by the Assistant Collector; that in the another classification list effective from 22-8-1986 they had given the description as "winding wire made of copper" and claimed exemption under Notification No. 69/86 as amended; that in another classification lists effective from 1-3-1987 the description given by them was "insulated copper winding wire"; that as such they have not suppressed anything from the department and accordingly large period for demanding the duty is not invokable in the present matter.

3. Countering the arguments, Shri M.P. Singh, ld. DR, submitted that Sl. No. 4 of the Notification specifically provides a higher rate of duty in respect of insulated wires/cable and as the impugned product is insulated wires, it will be chargeable to duty under the said Sl. No; that what is being manufactured by the Appellant is nothing but paper insulated copper wire and as such they are eligible only to the rate of duty applicable to Sl. No. 4 of the Notification; that the end use criteria cannot be applied across the board. He finally, submitted that the demand is not hit by time limit as the appellants had deliberately changed description of the goods in the classification list; that different method of describing excisable goods was deliberately adopted by them which amounts to mis-classification of goods.

4. We have considered the submissions of both the sides. Notification No. 69/86 C.E., as amended provides concessional rate of duty in respect of electric wires and cables falling under heading No. 85.44 of the Central Excise Tariff. The relevant Sl. Nos. of the Notification are as under:--Sl. No. Description Rate--4.

Insulated (including enamelled or ano- 25% ad valorem dized) wire, cable (including co-axial It has not been disputed by the Revenue that the product manufactured by the appellants is winding wire. Only dispute is that the product according to the Adjudicating Authority is "insulated paper coated winding wire" and not 'winding wires' made of copper. Once it is not in dispute that the product manufactured by them is winding wire the rate of duty as indicated, against Sl. No. 1 (ii) of the Notification will be payable by the Appellants as this Sl. No. specifically refers to the product 'winding wire'. We, therefore, hold that the Appellants are eligible to the exemption as provided under Sl. No. l(ii) of Notification No. 69/86-CE. We allow the appeal on merit without considering the question of demand being time barred.