

**Commissioner of Central Excise and Vs. Commissioner of Central Excise and**

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**Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai**

**Decided On : Apr-27-2001**

**Reported in : (2001)(135)ELT861Tri(Mum.)bai**

**Appellant : Commissioner of Central Excise and**

**Respondent : Commissioner of Central Excise and**

**Judgement :**

1. Span Heat Transfer Equipment Manufacturers Pvt. Ltd., Navsari (Span for short) is engaged in the manufacture of housing and other parts of electric transformers. It sought for, and received, for permission from the department to send to job workers items such as sheets, pipes etc.

for operations such as shaping, punching, to be carried out on them, the goods thereafter to be returned to it for use in manufacture.

2. The manufacturer availed of notification 1/93. This notification exempts unconditionally from duty first clearances up to the value of Rs.30 lakhs. The department was of the view that goods so cleared within the value of Rs. 30 lakhs would not be entitled to the benefit of notification 214/86 for the reason that the notification exempted goods manufactured as job work and "in or in relation to the manufacture of final product (on which duty of excise is leviable whether in whole or part)". This condition in notification 214/86 would not be satisfied with regard to

the goods cleared within the exempted first slab of notification 1/93 The Assistant Collector confirmed the proposal in the notice issued to it demanding duty for the period from February to April, 1994.

3. The manufacturer appealed from this order to Commissioner (Appeals).

The Commissioner (Appeals) said that the condition in notification 214/86 requiring that the final product pay duty, which we have reproduced above, has to be construed as to include cases where there was nil payment of duty in accordance with law, relying for this purpose the upon judgement of the Patna High Court in Tata Yodogawa Ltd. Vs. Union of India 1987 (32) ELT 521 and decisions of the Tribunal. He therefore allowed the manufacturer's appeal. Appeal E/1545/96 is against this order of the Commissioner (Appeals).

4. Another notice that was issued to Span demanded duty, on the same grounds, for clearances made between April, 1990 and December, 1993.

The notice issued on 28.3.1995 invoked the extended period contained in the proviso under Section 11A(1) of the Act. The appeal E/2113-R/1996-Bom by Span Heat Transfer Equipment Manufacturers Pvt.

Ltd is against this order of the Commissioner confirming the proposal in the notice and imposing penalty of Rs. 50,000/- on Span Heat Mfrs.

Pvt. Ltd. 5. Counsel for Span does not dispute before us that the construction of notification 214/86 by the Commissioner (Appeals) cannot be upheld in the light of the decision of the Tribunal in Searle (India) Ltd. Vs.

CCE 1996 (101) ELT 118. This decision has held that the benefit of notification 214/86 would not be available to final products cleared without payment of any duty. He, however, contends that in that event the demand for duty falls not upon Span, the manufacturer of the final product, but upon the job worker. He cites the decision of the Tribunal in Desh Rolling Mills Vs. CCE 2000 (122) ELT 481.

6. Paragraph 2 of notification 214/86 contains a condition which has to be satisfied before the exemption is granted, that the supplier of raw material or semi finished

goods undertakes that the goods manufactured by the job worker will be used in or in relation to the final products and to produce evidence in support, failing which the supplier undertakes the responsibility to pay excise duty leviable on the finished goods. The notification therefore does not cast upon the supplier of raw material an obligation to pay duty on the goods manufactured by the manufacturer. In the normal course the manufacturer who (in this case the job worker) who will pay duty upon the goods manufactured by it. It is on this basis that the Tribunal, in its decision in Desh Rolling Mills, declined to accept the contention of the job workers before it that they were not required to pay duty on the goods that they manufactured and it is the supplier of the raw material who is to discharge that liability. It has therefore to be held that the duty was not payable by Span.

7. Accordingly, the order of the Commissioner (Appeals) holding that the benefit of notification 214/86 will be available is set aside and the department's appeal allowed. However, the prayer in the appeal for restoring the order of the Assistant Collector, demanding duty from Span is denied. Appeal E/2113/96 is allowed and the impugned order set aside. Consequential relief in accordance with law.

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