**Shetron Ltd Vs. Commissioner of Central Excise,**

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**SooperKanoon Citation** : sooperkanoon.com/22735

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

**Decided On :** May-02-2001

**Reported in** : (2001)(135)ELT736Tri(Mum.)bai

**Appellant** : Shetron Ltd

**Respondent** : Commissioner of Central Excise,

**Judgement** :

1. The appellant received three consignments totally weighing 189.315 tons of goods described as "electrolytic tin plate W/W", "Appx. Waste waste quality electrolytic tin plate" and "electrolytic tinplate waste/waste" which had been imported by Fibre Foils Ltd. It is state that Fibre Foils Ltd. is a "sister concern" of the appellant. The appellant took credit of the duty shown to have been paid in the three bills of entry in which the consignments were cleared. The appellant took credit of the duty shown to have been paid in July, September and October 1993. In January 1994 and March 1994, it issued two gate passes for clearance of tin plates totalling 189.315 tons.

2. Notice issued to the appellant in April 1994 demanded duty equal to the credit taken by the appellant on the three consignments that it received, on the ground that the bills of entry wee not valid documents for it to take the credit, and also proposed penalty. The Assistant Collector did not accept the contention that the credit has already been neutralised by issue of gate passes. He said that initially incorrect credit taken could not be regularised by issue of gate passes. He was also of the view that what the appellant received was tin plate waster and what it

cleared was not tin plate and therefore confirmed the demand for duty and imposed penalty. This order having been confirmed by the Commissioner (Appels), the matter is before the Tribunal.

3. The counsel for the appellant does not deny that the credit could not have been taken and therefore does not dispute that credit ought to be reversed. He also does not dispute the liability of the appellant to penalty. His argument is that credit once having been reversed by issue of gate passes, it cannot be demanded again. he also contended that the goods, which were imported, received by the appellant are in fact sheets and not tin plate of waster waste quality the fact which is evident from the dimension of the sheets in the bills of entry. The quantity of goods received the appellant cleared by it also tallies.

4. The departmental representative reiterated the finding in the order of the Assistant Collector and the Commissioner (Appeals).

5. I am not able to understand the logic that these two authorities have advanced, when they say that clearance of the goods on payment of duty has nothing to do with the reversal of the credit that was earlier ordered. The question of clearance of goods under Rule 57F(I)(ii) would only rise in cases where credit of the duty paid on the input is taken.

Where no such credit is taken, the provisions of this sub rule will not apply at all. Where there is no dispute that the goods, which were received by the manufacturer and cleared under Rule 57(F( (I) (ii) are the same, there will be no question of the manufacturer having taken the credit once again. Assuming fro a moment that what the appellant received and cleared were the same goods, there is no question of it having once again to pay duty by reversal of credit. It is not applied to credit that it took towards payment of duty on finished goods. If, therefore is no dispute as to the identity of the goods, no further payment of duty would be required.

6. I am also not able to agree that the goods tat the appellant received and sent out were different. I have already reproduced above the manner is which the bills of entry described the goods. These documents also indicate the liner dimensions

- 700 x 500 x .19 millimetre in each case, in other words are sheet of tin plates and therefore not be waste within the meaning of Note (8) to Section XV of the Customs tariff. The fact that they have been classified under Heading 7210.10 which is for sheets, not under Heading 7204.00 which would be applicable to waste further confirms this view. The total quantity of the goods shown in the bills of entry corresponds with the total quantity of the goods shown in the gate passes. Therefore, I must conclude that the appellant cleared what it received and not anything else. Since it has already reversed the payment of the duty on the gate, there is no question of it having to pay the duty once again.