

Commissioner of Central Excise, Vs. M/S. I.B.P. Company Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-28-2001

Reported in : (2001)(76)ECC715

Appellant : Commissioner of Central Excise,

Respondent : M/S. I.B.P. Company Limited

Judgement :

1. This is a petition for decision whether the benefit of Notf.No191/87-CE dt.4.7.87 shall be available to a unit manufacturing explosive used in another unit which is engaged in mining copper ore.

2. The facts of the case briefly stated are that M/s.I.B.P.Company Limited are engaged in the manufacture of prepared explosives.These explosives are sold to M/s. Hindustan Copper Limited. M/s.I.B.P.Company Limited filed a refund claim stating that they were entitled to the benefit of Notf.No.191/87-CE dt.4.7.87 on the ground that M/s.Hindustan Copper Limited were using the explosives for producing copper concentrates after following the Chapter X procedure.The Assistant Commissioner alleged that the refund of duty cannot be sanctioned inasmuch as the explosives are used for mining and mines are not factories.The Commissioner (Appeals) accepted the refund claim holding that these explosives are used in relation to the manufacture of copper concentrates and set aside the order of rejection passed by the adjudicating authority.Being aggrieved by this order, the Revenue has filed the present appeal.

3. Arguing the case for Revenue, Shri S.P.Rao, Id.DR submits that prepared explosives are sold by M/s.I.B.P.Company Limited to M/s.Hindustan Copper Limited. He submits that these explosives are used in mining copper ore away from the factory where copper concentrates are produced. He submits that these explosives are not directly used for the manufacture of copper concentrates on which the concession of duty under Notif.No.191/87-CE was available. He submits that in these circumstances the passing of the refund claim by the lower appellate authority was not correct.

4. Shri R.Pal, Id.Consultant appears for the respondents and submits that Notf.No.191/87-CE is applicable in their case inasmuch as the conditions of the notification regarding movement of the goods under Chapter X were fully complied with. He submits that these prepared explosives are used no doubt in mining copper ore but copper concentrates are manufactured from copper ore only, therefore the use of these prepared explosives can be termed as used in relation to the manufacture of copper concentrates. In support of his contention, he cites and relies upon the decision of this Tribunal in the case of CE vs.Hindustan Zinc Limited and vice versa reported in 2001 (43) RLT 432.

In this case, this Tribunal held that the explosives used in mine are eligible for the benefit of Notf.No.191/87-CE dt.4.7.87 in view of the fact that the activity of mining is integrally connected with the activity of manufacture of zinc and copper concentrate and, therefore explosives are to be treated as used in their manufacture and entitled to the benefit of Notification No.191/87-CE dt.4.7.87. He, therefore submits that in view of this observation of the Tribunal, the decision of the lower appellate authority is correct and may be upheld. 5. On careful consideration of the submissions made by both sides, we find that prepared explosives are used by M/s.Hindustan Copper Limited in relation to manufacture of copper concentrates. The activity of mining copper ore is closely relating to preparation of copper concentrates. The activity of mining copper ore is internally connected with the activity of manufacture of copper concentrates. Following the ratio of the decision of this Tribunal in the case cited and relied upon by the respondents, we hold that the benefit of Notf.No.191/87-CE dt.4.7.87 shall be available to M/s.I.B.P.Company Limited. In the circumstance, the impugned order

is upheld and the appeal of Revenue is rejected.

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