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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-23-2001

Reported in : (2002)(144)ELT370Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Pefco Foundry

Respondent : Collector of Central Excise, Pune

Judgement :

1. The above appeal arises out of Order of the Collector of Central Excise (Appeals), who while remanding the issue of classification of castings manufactured by the appellant herein for fresh decision by the Assistant Commissioner in the light of the decision of the Tribunal in the case of Shivaji Works Ltd. [1994 (69) ELT 674 (Tribunal)] has denied the benefit of exemption in terms of Notification 275/88 to the goods in question. The benefit of the notification has been denied on the ground that the benefit is available to unmachined castings, while appellants carried out proof machining on the goods in dispute and therefore, the disputed goods are not unmachined castings.

2. We have heard both sides. It is the contention of the appellants that proof machining castings will not take them out of the category of unmachined castings and in support of this contention he relied upon the decision of the Tribunal in the case of Shivaji Works Ltd. v.Collector of Central Excise, Aurangabad. He also relied upon the Circular No. CBEC 24/89 dated 1/8/89 clarifying that exemption

under Notification 275/88 will be available on unmachined castings and unmachined casts articles which have not been subjected to any machining other than fettling. We find that the decision of the Tribunal and the circular relied upon above do not go to the aid of appellants, since the Tribunal's decision no where holds that castings which are proof-machined still qualified to be as unmachined castings and the Tribunal has also not held that Chapter Heading 73 under which goods in the case of Shivaji Works Ltd. has been classified, covers only unmachined castings. The circular also is confined to exemption being extended to castings subject only to the process of fettling.

This is clear from the circular. Since in the present case, the goods have admittedly been machined, the fact that the classification dispute is still to be decided will not in any way affect the question of eligibility to the benefit of the Notification. Since the notification grants benefits only to unmachined castings, the goods in dispute are not covered thereunder. We, therefore, hold that there is no legal infirmity in the impugned order denying the benefit of Notification 275/88 to the goods in dispute and granted uphold this finding and reject this appeal in so far as it relates to items which are admittedly proof-machined.

3. The Ld. Counsel for the appellants submits that two items out of the items in dispute namely; SG Iron castings and Spacer rings are item of castings on which even proof-machining is not carried out and therefore, the benefit of exemption under Notification 275/88 should be held to be available to these goods. We find that this plea was raised by the appellant in the appellant filed before the Commissioner (Appeals) and has been noted in the Order, but no finding has been recorded thereon. Since we are not in a position to categorically hold as to whether any proof-machining was carried out on SG Iron castings and Spacer rings, we remand the issue as to whether any proof-machining was carried out on SG Iron castings and Spacer rings to the Jurisdictional Assistant Commissioner and if on verification it is found by him that the claim of the appellants that no proof-machining is carried out on these two items is correct, then the benefit of Notification 275/88 shall be extended to these goods.

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