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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-15-2002

Reported in : (2002)(142)ELT374Tri(Chennai)

Judge : S Peeran, R K Jeet

Appellant : Commissioner of Central Excise,

Respondent : Batlibai and Co.

Judgement :

1. These are two Revenue appeals against a common Order-in-Original No.191/96, dated 11-12-96 by which the Commissioner has dropped proceedings initiated by show cause notice vide C. No.V/52/15/87/95-Cx. Adj., dated 20-12-95, The question before the Commissioner was with regard to grant of benefit of Notification No.61/90-C.E., dated 20-3-90. The terms of the notification reads as follows :- "NOTIFICATION No. 61/90-Central Excises, New Delhi, dated 20th March, 1990 GSR. (E) In exercise of the powers conferred by Sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts goods falling under Heading No. 73.08 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) fabricated at the site of construction work for use in such construction work from the whole of the duty of excise leviable thereon which is specified in the said Schedule." 2. In terms of the above notification and after due consideration of the case, and noticing the fact that appellants were carrying out the process of fabrication and installation of Ducts of

6-8 feet at the construction work at site held that it is covered by benefit of notification. The findings recorded in Paras 12 to 19 are extracted herein below : -

"12. I have carefully gone through the records of the case carefully and the party's reply to the show cause notice.

13. The main point to be decided in this case is whether ducts are dutiable or not.

14. Another relevant aspect to be considered in this case is the classification of ducts. This aspect was clarified as far back as 20-10-86, vide this office Trade Notice No. 184/86, dated 20-10*86, wherein it was decided to classify prefabricated ductings of GI/MS under chapter sub-heading 7308.90 of the Schedule to the Central Excise Tariff Act, 1985. As per HSN section notes to Chapter 7308, Chapter sub-heading 7308.90 covers "complete or incomplete metal structure, as well as parts of structures. For the purpose of this heading, these structures are characterised by the fact that once they are put in position, they generally remain in that position." Hence, prefabricated ducts are classifiable under Chapter 7308.90 even before their installation/fixation to the wall or floor.

15. In the light of the above, I hold that ducts are basically pre-fabricated structures, meriting classification under Chapter 7308.90 of the Schedule to the Central Excise Tariff Act, 1985.

Goods under Chapter sub-heading 7308.90 become eligible for exemption from payment of duty vide Notn. No. 61/90, dated 20-3-90 as amended during the relevant period, which exempts goods falling under Heading 7308 of the schedule to the Central Excise Tariff Act, 1985, fabricated at the site of work for use in construction work at such site, from the whole of duty leviable thereon, which is specified in the schedule to the Central Excise Tariff Act, 1985.

16. I have also passed similar order on the same issue vide order SI. No. 18/96, dated 09-02-96 in file C. No. V/84/15/17/95 Cx. Adj.

17. In the circumstances mentioned above, I hold that no duty is demand-able from M/s. BC for the above processes, which is exempted from payment of duty. Also no penalty can be imposed under Rules 9(2) and 209A of the Central Excise

Rules, 1944 on M/s. BC. 18. Further, the penalty is imposable on M/s. TSM under Rule 209A of the Central Excise Rules, 1944.

I drop further proceedings in the case, proposed vide show cause notice vide C. No. V/52/87/95-Cx. Adj., dated 20-12-95." 3. Revenue contends in this appeal that terms of the notification restricts for grant of benefit, where fabrication at site of work for use in construction work is carried out. It is contended that the notification appears to be inapplicable in the instant case since it is meant for only those goods (falling under Chapter Heading 73.08) which were fabricated at the site of work for use in construction work.

Erection/installation and humidification of plant would not be called as construction work. It is stated that the said ducts are being manufactured for use in the humidification plant and not in construction work as cited in the notification and the term "construction work" would refer to construction of buildings or structures and not machinery/plant and hence the goods "ducts" being dutiable are not eligible for the benefit of the notification.

4. We have heard ld. DR, Shri C. Mani and ld. Chartered Accountant Shri G. Suresh.

5. Ld. DR read out the grounds and relied on the same and contended that the order of the Commissioner is required to be set aside as the activity is not activity of construction work.

6. On the other hand, ld. Chartered Accountant submitted that the construction work is not used in restrictive sense in the notification.

Such a restriction cannot be imposed in an exemption notification and he also submits that the issue is no longer res integra and this item on the very notification came up for consideration in the case of Nova Iron and Steel Ltd. v. CCE, Raipur, - 1997 (95) E.L.T. 495 (T) wherein the Division Bench at New Delhi have held that "ducts" supports are parts of structure classifiable under 73.08 and since the goods are fabricated/manufactured at plant site and falling under the said chapter heading, they are exempt under the said notification. He submitted that the issue

being no longer res integra, hence appeals are required to be rejected.

7. We have carefully considered the submissions and have gone through the records. There is no dispute with regard to classification of the item and it is only the benefit of notification which is challenged.

There is force in the submission made by ld. Chartered Accountant that there is no restriction placed on the term "construction work at site".

The Tribunal examined the issue in the case of Novo Iron and Steel Ltd. v. CCE, Raipur (supra) and upheld the assessee's contention . The Commissioner has also clearly given his findings and the findings are legal and proper and cannot be said to be in contrary with the citations already cited supra. The Tribunal in Paras 6-8 of the above judgment have held as follows :- "6. Heard the submissions of both sides. We find that the first question to be answered in the case is as to what is the classification of Hollow Profiles and Ducts and Ducts' Supports. For the purpose of clarity the Chapter Headings 73.06,73.08 and 84.21 are reproduced as under: - "Heading No. 73.06 : Other tubes, pipes and hollow profiles (for examples, open seem or welded, riveted or similarly closed), of iron and steel." "Heading No. 73.08: Structures (excluding pre-fabricated buildings of Heading No. 94.06) and parts of structures (for example, bridges and bridge-section, lock-gates, towers, lattice masts, roofs, roofing frame works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillers and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like prepared for use in structures of iron and steel." "Heading No. 84.21: Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases." 7. We find that Chapter Heading 73.06 covers tubes, pipes and hollow profiles of iron or steel. Here we are concerned with the examination of a chimney fabricated/manufaclured in a plant meant for the manufacture of sponge iron. The product no doubt is described by them as "hollow profiles". How-ever, the product is not used in the manufacture of tubes or pipes of a chimney. Now coming to the question, whether it is structure and part of structure of iron and steel or plates, rods, angles, shapes, sections, tubes and the like prepared for used in structure of iron or steel. We note that chimney of a specific size and dimension is the

requirement of specific plant. We also note that the parts of chimney are not sold inasmuch as the requirement of specific plant as to chimney will be different. Therefore, the first question that will arise whether these items described as "hollow profiles" are excisable goods or not. Since they are not marketable therefore they are not excisable goods. Even from the goods, we find that they are more in the nature of structures and parts thereof. Thus, they will be classifiable under Chapter Heading No. 73.08.

8. Regarding Ducts and Ducts' Supports, we find that the department's contention is that it is pollution control equipment classifiable under Chapter Heading 84.21. We note that it is conveyor system for carrying the gases/air and cannot be termed as pollution control device as a pollution control equipment is required to purify/filter the air or gases. The function of purifying is not performed by Ducts and Ducts' Supports, therefore, they cannot be termed as pollution control equipment for classification under Chapter Heading No. 84.21. Again when a plant is being ins tailed/erected as a larger structure, various devices for carrying the surplus materials away from the plant are required.

This is one of the devices of the structure. So also can be said for Ducts and Ducts' Supports. In this view of the matter, we hold that Ducts and Ducts' Supports are parts of structures classifiable under Chapter Heading No. 73.08. Since the goods fabricated /manufactured at the plant site and falling under Chapter Heading 73.08 are exempted under Notification No. 61/90, we hold that Ducts and Ducts' Supports are eligible for exemption benefit under the aforesaid notification. In the circumstances, the appeal is allowed with consequential relief in accordance with law." 8. On a perusal of the above finding, we are satisfied that the issue is fully covered and the benefit of notification has been rightly extended by the Commissioner. There is no merits in these appeals and hence the appeals of Revenue are rejected.

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