

Cmi Ltd. Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-14-2002

Reported in : (2002)LC538Tri(Delhi)

Judge : S Kang, a T V.K.

Appellant : Cmi Ltd.

Respondent : Commissioner of Central Excise,

Judgement :

1. The issue involved in this appeal, filed by M/s. CMI Ltd., is whether the end cutting of wires and cables are classifiable under Heading 74.04 of the Schedule to the Central Excise Tariff Act.

2. Shri Ramesh Sharma, learned Consultant, submitted that the Appellants manufacture insulated wires and cables falling under sub-heading 8544.90 of the Tariff; that during the course of manufacture of the insulated wires and cables, waste and scrap arises which is non-marketable as wires and scrap; that the Assistant Commissioner has, under the Adjudication Order No. 111/99, dated 2-9-99 classified the end cutting of PVC wires and cables under sub-heading 7404.90 and long cut pieces under sub-heading 8544.90 of the Tariff and confirmed the demand of duty on the ground that the impugned goods are sold to various Metal traders and in terms of Note 5 to Section XV of the Tariff, the principle of predominance by weight would apply; that on appeal, the Commissioner (Appeals) under the impugned Order, agreed with the findings in the Adjudication Order;

that, however, the Commissioner (Appeals) observed that it is not clear whether the demand of duty pertains to small pieces or to the long pieces of wires and cables; that if the demand is as per the findings, the same shall hold good and if this is not the case then the demand has to be reworked as per the findings and communicated to the Appellants. The learned Consultant, further, submitted that the show cause notice dated 30-3-99 was issued to them for demanding duty in respect of end cuttings of wires and cables classifiable under Heading 74.04; that this matter stands settled by the decision of the Supreme Court and the Tribunal; that the Tribunal in the case of Finolex Cables Ltd. v. CCE, Pune -1996 (86) E.L.T. 418 (Tribunal), has held that "Waste and scrap of wires and cables are not excisable goods."; that the appeal filed by the Revenue was dismissed as reported in 1997 (96) E.L.T. A229. He further relied upon the decision in CCE, New Delhi v. Hitech Cable -1996 (86) E.L.T.88 (Tribunal), wherein it was again held that waste and scrap of insulated wires and cables are not excisable; that the appeal filed against this decision has also been dismissed as reported in 1996 (87) E.L.T. A131. Reliance has also been placed on the decision in Finolex Cables Ltd: v. CCE, Pune - 1997 (96) E.L.T. 406 (Tribunal).

3. Countering the arguments, Mrs. Neeta Lal Butalia, learned SDR, submitted that the scrap of wires and cables which was in consideration in the case of Finolex Cables Ltd. - 1996 (86) E.L.T. 418, was in the form of a mass of metal and insulating compound which is not marketable as cables; that this is evident from the submissions made by M/s.

Finolex Cables in their appeal memorandum reproduced in Para 5 of the Tribunal's decision (Pages 423-24). The learned SDR contended that in the present matter there is no unserviceable mass as apparent from the samples shown by the learned Consultant for the Appellants; that similar observation was made by the Tribunal in another case of Finolex Cables Ltd. v. CCE, Pune - 1998 (100) E.L.T. 517 (Tribunal) (Para 5).

Finally she submitted that what is being sold by the Appellant is the metal content which falls under Heading 74.04 of the Tariff being "Copper waste and scrap." She relied upon the decision of the Larger Bench of the Tribunal in the case of

Universal Containers v. CCE, Bombay - 2000 (120) E.L.T. 538 (T-LB), wherein it has been held that Waste arising during the process of manufacture of metal containers from Metal Coils, sheets and strips is a waste and scrap arising from goods falling under 72.01 to 72.13 and not from goods falling under any other headings.

4.1. We have considered the submissions of both the sides. The show cause notice was issued to the Appellants for demanding duty on end cutting of wires and cables which according to Revenue was classifiable under Heading 74.04 which applies to "Copper Waste and Scrap." Thus it is not in doubt that the Department was treating the end cuttings of wires and cables as copper waste and scrap. This is also evident from the Adjudication Order in which the Adjudicating Authority referred to Note 5 of Section XV of the Central Excise Tariff which mentions that articles of base metal containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metal. As per the findings in the Adjudication Order, huge quantity of scrap is generated and bought and sold in the market. The scrap is generally sold in the mass only. No evidence/material has been brought on record by the Revenue that the impugned goods were not unserviceable pieces in the form of a mass of metal and insulating material. It has been settled by the decisions of this Tribunal which have been confirmed by the Apex Court that waste and scrap of wires and cables is not excisable goods. Further, in Finolex Cables' case reported in 1998 (100) E.L.T. 517, the learned DR had contended as under :- ".....the Tribunal decision in the appellants case was limited to whether the waste and scrap is classifiable under Heading 85.44 only and it was held in the negative in the absence of specific entry thereunder for .scrap. It did not address itself to the question of classification of the waste and scrap on the basis of the metal contents as such waste and scrap under Chapters 74 and 76 of CETA relevant for such metals in which there are headings specifically covering scrap and waste. Ld DR also relied upon Interpretative Rule 3(b) to the Tariff which provides in the case of mixtures of articles, classification, to be based on that portion which imparts essential characteristic to the goods." 4.2. The Tribunal, after considering this aspect, observed that the Tribunal in first Finolex case [1996 (86) E.L.T. 418] concluded "the question of their classification under CETA, 1985 does not arise" and "having

come to such a finding that the scrap of wires and cables was not excisable goods under the Central Excise Tariff Act, 1985, it would logically follow that the same will be the result for considering classification under items other than those under Chapter 85 CETA.....

The argument was made before the Tribunal that the waste and scrap of wires and cables would be classifiable as waste and scrap on the basis of metal conductors therein, and the Tribunal findings would cover such contention also, as noted above." In view of this settled legal position, the impugned Order is set aside and appeal is allowed.

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