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Commissioner of Customs Vs. Vinay Kumar

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-14-2002

Reported in : (2002)(145)ELT467Tri(Mum.)bai

Judge : J Balasundaram, S T S.S.

Appellant : Commissioner of Customs

Respondent : Vinay Kumar

Judgement :

1. The respondents herein imported a consignment of 12 coils of Tin Mill Black Plate (T.M.B.P.) weighing 96.045 MTs and cleared the same at concessional rate of duty in terms of ad hoc exemption Notification No.169, dated 10-10-90 which provided for concessional rate of duty on TMBP coils imported by MMTC for the manufacture of electrolytic tin plates. It was subsequently found that 8.35 MTs out of the total quantity imported was sold without tin plating and hence show cause notice proposing denial of the benefit of notification and proposing recovery of duty of Rs. 63,676/- as well as confiscation and penalty was issued, to which the respondents replied that they sold the quantity of 8.35 MTs since they were completely damaged and not fit for tin plating and that it cannot be said that T.M.B.P. was not imported for the manufacture of electrolytic tin plates. The adjudicating authority confirmed the charges set out in the show cause notice, confirmed the duty demand, directed confiscation of the goods cleared without payment of normal rate of duty and since they were not available for confiscation, he imposed a penalty of Rs. 50,000/- in lieu of confiscation as well as penalty of

Rs. 50,000/- each on the respondents herein under Sec. 112(a) of the Customs Act. The Commissioner (Appeals) set aside the order of the Addl. Commissioner holding inter alia that the goods in question were intended for the manufacture of electrolytic tin plates but could not be used due to damage. Hence, this appeal by the Revenue.

2. We have heard Shri Pardesi, D.R., for the appellant-Commissioner and Shri Anil Balani, Advocate, for the assessee. We find that there is no dispute that T.M.B.P. coils were rusted due to exposure to normal atmosphere and there is nothing to rebut the contention of the respondents that the coils were damaged by flood water and hence could not be used for the manufacture of electrolytic tin plates. In these circumstances, the decision of the Tribunal in the case of Tinplate Co.

of India Ltd. v. CCE [2000 (122) E.L.T. 234 (Tri.)] in which it has been held that the benefit of concessional rate of duty in terms of ad hoc exemption Order No. 372, dated 24-10-1989, which granted partial exemption to TMBP coils imported for the manufacture of electrolytic tin plate is available even if some quantity of scrap is generated in the process, is directly applicable to the present case. The entire quantity of inputs should be considered to have been used in the manufacture of electrolytic tin plate. Following the ratio of the above order, we hold that the benefit. under ad hoc exemption Notification No. 169 is rightly extended by the lower appellate authority and hence uphold the impugned order and reject the appeal.

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