Cce Vs. Mangla Ispat Ltd.

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SooperKanoon Citation : sooperkanoon.com/28744

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-22-2002

Reported in : (2002)(84)ECC636

Judge : S T G.R., P Bajaj

Appellant : Cce

Respondent : Mangla Ispat Ltd.

Judgement :

1. Revenue has filed his this appeal being aggrieved by the Order passed by the Commissioner. The Commissioner had dropped the proceedings initiated against the assessees under Show-Cause Notice dated 16.8.2000.

2. The facts of the case briefly stated are that the respondents herein are engaged in the manufacture of iron and steel product that is casting alloy and MS Ingots, billets classifiable under Chapter heading 72, 73 and 84. On a surprise visit to the factory of the appellant certain checks were conducted. It was found that the respondents were engaged in the manufacture of re-rolled products. Scrutiny of the invoices for the purchase of raw materials revealed that the respondent herein had purchased alloy steel ingots falling under tariff heading 7224. They had during the material period manufactured 1842.135 MTs. of ingots. A Show-cause Notice case issued to the respondents herein asking them to explain as to why Central Excise duty amounting to Rs. 37,96,274 should not be recovered and why penalty should not be imposed. In reply to the Show-cause Notice the respondents herein

submitted that their plant was fully automatic and suitable for MS bars only; that alloy steel could not be rolled in their plant. They also referred to a certificate issued by supplier of bar mill certifying that alloy steel could not be rolled in this mill. It was contended by them that they were manufacturing the said bars used for concrete reinforcement stating that such goods could not be manufactured from alloy steel. They also referred to purchase order received by them to show that the product supplied by them was MS ingots. It was also contended that invoices showed the ingots of iron and steel and that it was not specified whether it was alloy or non-alloy. They also submitted that during the material period of February 1999 to June 1999 they purchased 9186 MTs. out of which they purchased from M/s Raghuveer Metal only 1842 MTs.

3. Learned Commissioner after examining their pleas and contentions dropped the proceedings. The matter was reviewed by the Central Board of Excise & Customs which gave rise to the present appeal.

4. Shri M.M. Dubey, learned DR for Revenue submits that the learned Commissioner fell in error that the goods were classified under sub-heading 7224.10 as ingots of alloy steel and therefore, the product manufactured out of these ingots would remain products of alloy steel.

It was contended by Revenue that the product was removed on payment of duty as alloy steel ingots and that there was no evidence to prove that the ingots were other than those. IT was also contended that samples were drawn at the place where ingots were manufactured and the same were found to be of alloy steel. It was contended that the learned Commissioner further erred in not appreciating that the evidence conclusively proved that the ingots received were of alloy steel inasmuch as the ingots were removed on payment of duty and were classified under Chapter heading 7224. It was submitted by Revenue that in view of documentary evidence showing the product as of alloy steel as also the testing of the samples clearly proved that the ingots received by the respondents were of alloy steel, He, therefore, prayed that the impugned order may be set aside and the appeal may be allowed.

5. Shri B.L Narasimhan, learned Counsel appearing for the respondents herein submits that their plant was incapable of manufacturing steel alloy product. He submitted that the supplier actually wanted to take advantage of taking modvat credit on capital goods and therefore, instead of showing the ingots as of mild steel he described the goods as Ingot of iron and steel and took advantage. Learned Counsel submits that the Field Testing Station Laboratory, Jaipur was requested to visit the unit who visited on 12.2.2001 and after examining the technical specification of the re-rolling mill installed concluded that installed re-rolling mill of the assessee was suitable to manufacture only mind steel not rolling, and not suitable for not rolling of alloy steel and drew conclusion and they gave the following decisions: (i) Alloy steel has basically higher Tensile Strength and resistance to deformation compared to mind steel. Hence it is to be rolled at low speeds. The speeds observed indicated at point No. 2 are very high to roll alloy steel.

(ii) The average reduction per pass for alloy steel is less compared to mild steel. The number of passes indicated at point No. 3 above are not suitable for alloy steel rolling.

(iii) The alloy steel have strength and hardness compared to mild steel. The material of rolls as indicated above at point No. 4 is not suitable for alloy steel rolling. The roll should be made of tempered steel.

(iv) The distance between furnace to Roughing mill, Roughing mill to Intermediate mill and Intermediate mill to finishing mill as indicated above at point No. 5 is high for alloy steel rolling. The reason is that alloy steel is rolled at lower temperature compared to mild steel. Hence there will be temperature drop.

(v) No welding or ragging is allowed while rolling alloy steel, since these welding mark will appear in final finished product as hair cracks.

(vi) Automation of alloy steel rolling requires lifting table and escapement reapters.

(vii) For alloy steel rolling mill, the stands should be made of steel.

6. It was also opined by them that plant/machinery of the assesses cannot be converted for manufacture of alloy steel. Further they noted that present working area of the mill is not sufficient for alloy steel rolling and that it is not possible to roll alloy/non-alloy in same mill alteratively/instantly without effecting the production capacity.

Practically it is not possible to manufacture both in the same mill as the technical requirement of both rolling differs much.

7. Learned Counsel, therefore, submitted that in so far as the testing of the sample is concerned It may be said that the sample was lifted much after the period for which duty had been demanded and therefore, should not be relied upon.

8. Learned Counsel, therefore, prays that the impugned order may be upheld and the appeal may be rejected.

9. On careful consideration of the pleas by both the sides we note in the instant case that in the invoice the supplier of the Ingots declared the ingots as product of iron and steel casting alloy and MS ingots, billets etc.

10. We note that the entire dispute is because of alloy steel products, duty was payable under Section 3 of the Central Excise Act and Modvat credit could be taken on the capital goods used in the manufacture of alloy steel products. Whereas non-alloy steel products were leviable to duty under Section 3A and were not eligible to Modvat credit on capital goods. We note that contention of the learned Counsel for the respondents herein was that supplier of ingots wanted to take advantage of capital goods duty under Modvat Scheme, It was also pleaded by the learned Counsel for the supplier of material that a separate case has been booked against them on this score.

11. We note that before deciding the issue the learned Commissioner took the matter with the Field Testing Station Laboratory, Jaipur who certified that the plant installed in the premises of the respondent herein could only produce non-alloy steel products. This was the expert opinion which has been relied upon by the learned Commissioner. No such opinion has been produced by Revenue in

support of their contention that the plant installed by the respondents herein was capable of producing alloy steel products also.

12. In so far as testing of a sample is concerned we note that this sample was tested out of the goods produced much after the period for which the demand has been raised and thus the result of this test cannot be applied to the goods which were produced much before the date of taking samples.

13. Having regard to the above discussion we do not see any reason to interfere with the impugned order, the same is, therefore, upheld and the appeal is rejected.