E.P. Electro Processing Pvt. Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-20-2002

Reported in : (2003)(159)ELT416TriDel

Judge : K Usha, a T V.K.

Appellant : E.P. Electro Processing Pvt. Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. M/s. E.P. Electro Processing (P) Ltd., have filed this appeal against the impugned Order-in-Appeal No. 377-78-C.E./DLH/2002 dated 3-7-2002 under which the Commissioner (Appeals) has confirmed the demand of duty and penalty against them.

2. Shri Suresh Agarwal, ld. Advocate, submitted that the appellants manufacture both dutiable as well as exempted goods in two separate portions of their factory; that they availed the facility of Modvat credit under Rule 57A and Rule 57Q at the Central Excise Rules, 1944; that the department has demanded duty and imposed penalty in respect of scrap generated during the manufacture of exempted goods; that the scrap arising in the course of manufacture of exempted goods is exempted from payment of duty under Notification No. 89/95 dated 18-5-95; that however proviso to the notification provides that the exemption shall not apply to waste or scrap cleared from a factory in which any other excisable goods other than exempted goods are also manufactured; that as they had two separate

portions in their factory for manufacturing dutiable and exempted goods having separate doors, the proviso to the notification is not attracted and the scrap in question is eligible for exemption from payment of duty. Alternatively, the ld. Advocate submitted that if duty is held to be payable by them, they should be allowed to take Modvat credit of the duty paid on the input. Finally, he submitted that no penalty is imposable on them as has been held by the Tribunal in their own case under Final Order No.527/2001/B, dated 1941-2001 [2002 (140) E.L.T. 230 (T)].

3. Countering the arguments, Shri Jagdish Singh, ld. DR, submitted that two portions of a factory cannot be treated as two independent factories; that as admittedly, that appellants are manufacturing both dutiable and exempted products, the proviso to the Notification No.89/95 dated 18-5-95 is attracted. He further submitted that no Modvat credit will be available to them as the inputs were brought for manufacture of exempted products and not the scrap.

4. We have considered the submissions of both the sides. We find that the issue has already been decided by the Tribunal in the appellant's own case vide Final Order No. 527/2001/B dated 19-11-2001, [2002 (140) E.L.T. 230 (T)], the Tribunal has held as under : "The reading of the notification provides that the benefit of this notification is not admissible to waste and scrap cleared from a factory in which any other excisable goods other than exempted goods are manufactured. The admitted fact of the present case is that the appellants are manufacturing both excisable as well as exempted goods in the same factory. The Hon'ble Supreme Court in the case of Mihir Textiles Ltd, v. C.C., Bombay reported in 1997 (92) E.L.T. 9 (S.C.) held that the benefit of exemption notification depends upon the satisfaction of certain conditions and cannot be granted unless such conditions are complied with, even if such conditions are only directory. In view of the above facts, we uphold the impugned order in respect of denial of the benefit of exemption notification.

However, taking into consideration the facts and circumstances of the case, the penalty imposed on the appellants is set aside. The appeal is disposed of as indicated above." 5. Following the ratio of the said decision, we uphold that they are not eligible for the benefit of exemption Notification No. 89/85-C.E., dated 18-5-1995. Further, as rightly submitted by the ld. DR, they are also not eligible for the Modvat credit of the duty paid on inputs, as the same were used in or in relation to the manufacture of finished products which were exempted from payment of duty. Following the ratio of the earlier order dated 18-11-2001, the penalty imposed on the appellants is set aside.