

**Sail Vs. Commissioner of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-11-2002

**Reported in :** (2003)(153)ELT172TriDel

**Judge :** K Usha, a T V.K.

**Appellant :** Sail

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. M/s. Steel Authority of India Ltd. have filed this appeal being aggrieved with the Adjudication Order Nos. 426-429/2001, dated 1-10-2001 under which the Commissioner, Central Excise has denied them the benefit of exemption Notification No. 217/86-C.E., dated 2-4-86.

2. Shri B.L. Narsimhan, learned Advocate submitted that the appellants manufactured various items of iron and steel in their workshop and used them as inputs in or in relation to manufacture of dutiable final products or for repair and maintenance of plants and machinery; that they claimed the benefit of Notification No. 217/86-C.E. which had been denied to them by the Commissioner in the Order impugned holding that none of the items manufactured in the workshop were in the nature of inputs. The learned Advocate, further, mentioned that the impugned goods are of the nature of spare parts of different machine and machineries and as such are eligible to exemption from payment of duty under Notification No. 217/86-C.E.; that no penalty is imposable on the appellants as they had claimed

the benefit of exemption notification under bona fide belief.

3. Countering the arguments, Shri Jagdish Singh, learned DR, submitted that the goods manufactured by the appellants in their workshop were either in the nature of capital goods or structural and as such were not inputs for manufacture of the final products. He also emphasised that the appellants did not file any reply to four show cause notices issued to them; that they also failed to submit defence reply before the Commissioner; that it is thus apparent that they did not avail of the opportunities given to them for explaining their case; that penalty is also imposable on the appellants for effecting the clearance of goods more than Rs. 4 crores without discharging the duty liability thereon.

4. We have considered the submissions of both the sides. It has not been disputed by the learned Advocate for the appellants that no reply to the show cause notices issued to them were filed by them. Thus the appellants did not avail the opportunity of establishing before the Adjudicating Authority that the various items manufactured by them in their workshop were used as inputs. Notification No. 217/86-C.E., dated 2-4-86 exempts goods from payment of duty if the same are used captively in or in relation to the manufacture of the finished goods.

The appellants have not succeeded in establishing that the goods in question manufactured by them in their workshop were used as inputs in or in relation to the manufacture of their final products. The appellants are, therefore, not eligible to avail of exemption contained in Notification No. 217/86-C.E. Accordingly, we uphold the demand of duty confirmed by the Commissioner in the Order impugned. We also agree with the learned D.R, that penalty is imposable as the excisable goods were removed without payment of appropriate duty. Penalty of Rs. 3 lakhs imposed by the Commissioner is upheld as the same is not excessive considering the value of goods cleared and amount of duty involved (Rs. 61,18,449/-).

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