SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Commissioner of Central Excise Vs. Shreeji Concast Ltd. and ors.

Commissioner of Central Excise Vs. Shreeji Concast Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/31813

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-06-2003

Judge : S T Gowri, K Kumar

Appellant : Commissioner of Central Excise

Respondent : Shreeji Concast Ltd. and ors.

Judgement :

1. Shreeji Concast Ltd, Mono Steel India Ltd and Inducto Ispat Alloys Pvt Ltd were engaged in the manufacture of ingots of steel for which one of the raw materials is mild steel scrap. The assessees were availing of the modvat procedure and availed of the duty paid on the mild steel scrap towards payment of duty on the finished product. The notices issued to them alleged that in respect of some gate passes received by them, the duty shown to have been taken as credit what was received was in fact not scrap but mixture of scrap with other rerollable materials on which no duty was paid. The notice cited statements of suppliers or proprietors or directors of the traders of the materials who purchased the scrap from the ship breakers to say that they had not supplied the entire quantity of scrap shown in the gate passes. In addition, denial of credit and penalty were proposed on these firms as well as their directors. Adjudicating on the notice, the Deputy Commissioner by separate orders confirmed the demand for duty, confirmed also the extended period of limitation and imposed penalties.

2. The assessees and their directors appealed to the Commissioner (Appeals). These appeals were by the three assessees and by the three directors. The

Commissioner (Appeals) accepted the contention of the appellant before him that the extended period of limitation invoked in the notice was without authority of law. He further said that there was absolutely no evidence to show that there was any admixture of any other material with this ship scrap. The statements of the dealers to this effect have not been corroborated and were also contrary to the documentary evidence in the form of endorsement in the gate passes. He therefore allowed the appeal both on limitation as well as on merits.

This order is challenged by the Commissioner in the appeals.

3. We have heard the departmental representative. The respondents are absent and unrepresented. The cross objection has been filed in the case of Veljibhai Patel which has been considered.

4. The reason that the Commissioner (Appeals) advances, in support of his view that the extended period did not apply, is that it has not been shown that the assessee did not pay to the dealers the value of the goods i.e. the scrap and the amount of duty and that it is not the department's case that the gate passes were forged or otherwise falsified. It is true that the assessees had contended that they have paid the traders in scrap for the value of the goods by crossed cheque and there is no allegation that the gate passes were tampered. However, we do not see how these two facts conclusively settle the issue on limitation. The department's case, which is borne out by at least some of the statements that what the assessees paid was not only for the scrap and not the scrap alone but for the other material which it claimed to be non duty paid and also on account of facility that the traders extended by making available the gate passes which ought not to have been. Rafiq Harunbhai Dholia, partner of R.K.S. steel, one of the traders, in his statement, says that "These furnace units owners paid Rs. 100 to 125/- more than the market price prevailing at the time, for the GPIs attached with the scraps they have purchased." Rafiq Amanulla Kaliwala, proprietor of Nirala Industries Corporation says that "We were paid extra payment if we attached GPIs to the tune of Rs. 150/- to 200/- per consignment/truck load." Pravinbhai Jagmohandas Parekh, proprietor of Parekh Steels has also deposes as to extra payment of Rs. 50/- if the gate passes were attached. "Therefore, at least to this extent the mere

payment for the goods by itself does not lead to the conclusion that the extended period of limitation will not apply. It was never the department's case that the gate passes have been tampered with or forged. The department's case was that the gate passes which were endorsed by the traders were not used to cover transport of goods described in those documents. The Commissioner (Appeals)' reliance upon the fact that there being no tampered gate passes is therefore entirely irrelevant.

5. It is also not possible to agree with his view that because oral evidence of dealers is contrary to documentary evidence, there is no case. His reliance upon the decision of the Tribunal in R.P. Industries v. CC 1995 (61) ECR 400 is misplaced. In that decision, the Tribunal found on the evidence before it that the statement made by a person was not true because it contradicted the position as shown in the documents. Here however, there is no documentary evidence which contradicts the statement the suppliers what what was supplied was mixture of ship scrap and other material. The gate passes are not direct evidence of what a trader supplied. They were issued by the ship breakers to the traders who in turn endorsed them to the respondent.

The gate passes are therefore only evidence of fact that they were issued by such traders. The conclusion that they overrule the admissions in the statements is therefore clearly incorrect.

6. On these two basic issues the order of the Commissioner (Appeals) is wrong and has to be set aside. It will now have to be determined whether the material cited by the department is sufficient to justify applicability of the extended period of limitation or come to a definite conclusion based upon the preponderance of evidence, what the assessee received was not completely ship scrap on which duty has been paid. This would have to be considered by the Commissioner (Appeals).

We therefore think it appropriate that the matter is remanded to the Commissioner (Appeals) for deciding these issues after examining the material available and giving appropriate opportunity to the assessee and the evidence that the department may adduce.

7. The appeals are accordingly allowed and the matter is remanded to Commissioner (Appeals).

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com