**Kailash Metals Vs. Cce**

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**SooperKanoon Citation** : sooperkanoon.com/32049

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

**Decided On :** Sep-01-2003

**Judge** : P Bajaj, M T K.D.

**Appellant** : Kailash Metals

**Respondent** : Cce

**Judgement** :
1. This appeal has been directed by the appellants against the impugned order-in-appeal dated 8.11.2002 vide which the Commissioner (Appeals) has upheld the order-in-original of the Asstt. Commissioner who confirmed the duty demand, ordered the confiscation of the goods with an option to get the same redeemed on payment of redemption fine and imposed penalty, as detailed therein.

2. The facts are not much in dispute. The appellants are engaged in the manufacture of aluminium circles falling under heading 7606.10 of the CETA. They did not take any licence by getting themselves registered under the Central Excise Act. They were using aluminium circles for the manufacture of their final products aluminium utensils. Since their final product was exempt from duty, they were liable to pay duty on the aluminium circles which they did not pay. On taking out the physical verification of the goods, certain goods were also found lying an accounted in the factory for having been not entered in the statutory records and the same were seized. On completion of the inquiry, show cause notice was served on the appellants and after getting their reply, the adjudicating authority confirmed the duty demand of Rs. 17,183/- and imposed a penalty of Rs. 10,000/-.

The adjudicating authority also ordered the confiscation of the seized goods with an option to get the same redeemed on payment of redemption fine of Rs. 75,000/-. That order of the adjudicating authority has ben affirmed by the Commissioner (Appeals).

3. None has come present on behalf of the appellants. They have prayed for decision on merits. Therefore, we proceed to decide the appeals on merits after hearing the learned SDR. From the record, it is quite evident that the appellants had wrongly availed the benefit of Notification No. 67/95-CE dated 16.3.1995, as amended and claimed exemption on the intermediate product i.e. aluminium circles. They were not entitled to the benefit of this exemption notification as the intermediate products was used by them in the manufacture of aluminium utensils which were exempt from duty. Therefore, the benefit of this notification hand self rightly denied to them by the authorities below.

The amount of duty on this account confirmed against the appellants as is evident from the order-in-original is Rs. 17,183/-. However, from the record we find that they had already deposited Rs. 23,358/-. It will be, therefore, for the competent authority to look into this aspect while effecting the recovery of the duty amount.

4. Regarding the confiscation of the unaccounted goods, we also do not find any legal infirmity in the impugned order. no explanation was offered by the appellants fro having not entered the goods in any other records. The redemption fine, in our view, has been rightly imposed for getting the confiscated goods redeemed. We, therefore, find no illegality in the impugned order and upheld the same.