

Sushila Steels Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-09-2003

Reported in : (2003)(90)ECC596

Judge : K Usha, N T C.N.B.

Appellant : Sushila Steels

Respondent : Commissioner of Central Excise

Judgement :

1. Appellant is a manufacturer of steel bars, rods, etc., which were liable to duty under Chapter 72 of Central Excise Tariff. With effect from 1-8-97, units like the appellant's were brought under Compound Levy Scheme under Section 3A of the Central Excise Act, 1944. Waste and scrap generated after 1-9-97 in a unit under Compound Levy Scheme were also exempted under Notification No. 49/97. The appellant cleared the waste and scrap produced in their mill before compound levy scheme was introduced, without payment of duty. Under the proceedings impugned in this appeal, the lower authorities have made a duty demand of over Rs. 1.5 lakhs and imposed a penalty of Rs. 10,000/- on the appellant in regard to such clearance of waste and scrap produced before the change-over to the compound levy scheme.

2. The contention of the appellant in the present appeal is that it was under the impression that once a unit changed over to compound levy scheme, the waste and scrap in stock also remained covered by the compound levy scheme, and

non-duty paid clearance of waste and scrap produced before changeover to compound levy scheme was the result of that understanding and that there was no intention to evade payment of duty. It is also pointed out that the computation of duty has been done erroneously, inasmuch as the entire amount realised on the sale of the waste and scrap in question has been treated as assessable value instead of treating the price realised as cum-duty. It is submitted that such a valuation is contrary to law laid down by the Apex Court in the case of Maruti Udyog Limited. With regard to penalty, it is their submission that since the non-payment of duty was the result of confusion about legal provision, there was no intention to evade duty and imposition of penalty was not justified.

3. It is the submission of the learned SDR that exemption under Notification No. 49/97 was not applicable to the scrap in question since that exemption was in regard to waste and scrap generated in a unit working under compound levy scheme. Since it is not in dispute that the duty is in demand in respect of waste and scrap generated before changeover to compound levy scheme, the duty demand has been correctly made.

4. We have perused the record and have considered the submissions made by both sides. The duty demand as such has been correctly made inasmuch as there was no exemption in regard to waste and scrap produced prior to the introduction of compounded levy scheme. However, the appellant's submission in relation to method of valuation is required to be accepted as it is in conformity with the well settled valuation principles. Their submission on the question of penalty also merits acceptance in the facts and circumstances of the case.

5. In view of what is stated above, the jurisdictional Deputy Commissioner is directed to work out the duty amount, treating the price realised as cum-duty and give consequential relief to the appellant. Penalty imposed is also set aside. Impugned order is confirmed subject to these modifications. The appeal is disposed of as above.