

Dyanamic Engineers Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-10-2003

Reported in : (2004)(91)ECC313

Judge : Author: P Chacko

Appellant : Dyanamic Engineers

Respondent : Cce

Judgement :

1. Having examined the records and heard both the sides, we find that this case is fit for summary remand. Accordingly, we allow the stay application and proceed to dispose of the appeal.

2, The appeal is against Order No. 29/2003 dated 14.5.2003 of the Commissioner which was passed pursuant to Final order No. 21-24/2001-B dated 12.1.2001 of this Tribunal. By the said Final Order which was passed in an earlier batch of appeals filed by the present appellants, we had held 'GIR Joints' to be excisable as also classifiable under CSH 8530.00 for Central Excise duty. As regards the duty to be paid on the clearances of the goods in excess of Rs. 30 lakhs limit (under the relevant Small Scale Exemption Notification) for the period 1.6.94 to 21.1.98, we had remanded the case to the Commissioner to requantify the same in the manner we prescribed. The relevant part of our order reads: "The duty liability of M/s. Dynamic Engineers to pay Central Excise duty on GIR Joints is affirmed, but the amount of duty on the clearances of GIR Joints in excess of Rs.

30 lakhs limit during the period 1.6.1994 to 21.1.1998 shall be re-determined by the Commissioner after reconsidering the valuation of the rails and allowing Modvat credit on duty-paid inputs on the basis of the documents/statements mentioned at Sl. Nos. (i) to (vi) in para 6.5 above, and after giving a reasonable opportunity of hearing to the party. For this limited purpose, we remand the matter to the Commissioner of Central Excise. In view of the remand of the quantum of duty, the mandatory penalty imposed on M/s. Dynamic Engineer is set aside. The Commissioner will decide on such penalty afresh in accordance with law and natural justice." 3. The learned Commissioner has correctly understood the terms of our remand order as evidenced by para (8) of the order passed by him, which reads: "The CEGAT has directed the undersigned (1) to re-determine the amount of duty on the clearances of GIR Joints in excess of Rs. 30 lakhs limit during the period 1.6.1994 to 21.1.1998 after re-considering the valuation of the rails, and (ii) allowing modvat credit of duty paid on inputs on the basis of the documents/statements mentioned at Sl. Nos. (i) to (vi) in para 6.5 of the above final order, and (iii) to decide the amount of penalty under Section 11 AC, afresh in accordance with the law and natural justice." However, unfortunately, his decision cannot be said to be in accordance with the terms of our order inasmuch as the documents/statements mentioned at Sl. Nos. (i) to (vi) in para-6.5 of our order were not considered while taking such decision. Therefore, we have no option but to send the case back to the Commissioner for correct decision in terms of the earlier remand order. The impugned order is set aside and the appeal is allowed by way of remand. The adjudicating authority shall pass a fresh order in compliance with the terms of our earlier remand order. Needless to say, the appellants shall be given a reasonable opportunity of being heard on the remanded issue.