

Antarctic Industries Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-29-2003

Reported in : (2004)(92)ECC326

Judge : P Chacko

Appellant : Antarctic Industries Ltd.

Respondent : Cc

Judgement :

1. The appellants had imported a consignment of 'heavy melting scrap of iron/steel' and cleared the same through Customs House, Kandla under Bill of Entry dated 18.6.98. The quantity of the goods shown in the Bill of Entry was 266.45 MTs which was the quantity covered by the relevant invoice and shipped from abroad. The proper officer of Customs who inspected the consignment noted the 'quantity received' as 261.390 MTs on the reverse side of the Bill of Entry. He also entered the same figure against 'quantity issued'. The quantity so issued at Customs was cleared by the party on payment of duty at concessional rate in terms of Notification No 11/97-Cus dated 1.3.97. Later on, the Department issued a show-cause notice under Section 28 of the Customs Act to the appellants demanding differential duty in respect of the differential quantity of 5.06 MTs on the ground that the benefit of the notification was not available to such quantity of the goods as was not used for the purpose prescribed under the notification. The demand was contested.

The original authority confirmed the demand. The lower appellate authority upheld the decision of the original authority. Hence the present appeal.

2. Heard both the sides. The Counsel for the appellants submits that the quantity of goods delivered to them from the Customs barrier was only 261.390 MTs as evidenced by the proper officer's report entered on the reverse side of the Bill of Entry. The said quantity was admittedly melted in the appellant's induction furnace as certified by the Deputy Commissioner of Central Excise having jurisdiction over their factory.

The Department has no case that the differential quantity of 5.06 MTs of scrap was used or disposed of otherwise than by melting in the induction furnace. The relevant condition under the notification was duly complied with by the appellants. Therefore, the demand of differential duty is not sustainable. The learned Counsel refers to the decision of this Tribunal in *National Organic Chemical Industries Ltd v. CC Mumbai 2002-TaxindiaOnline- -CESTAT* and submits that, in the said case, the benefit of a similar notification (No. 158/76-Cus) was granted to the importer by condoning a quantity difference of about 1% between the 'quantity discharged' and the 'quantity consumed.' The learned DR, contesting the applicability of the cited decision, submits that the said decision was rendered in the particular facts and circumstances of that case, in which there was an elaborate procedure to transfer of the imported goods (naphtha) from vessel to the assessee's plant, laid down under the Public Notice issued by the Commissioner of Customs, Mumbai. The learned DR also refers to the Consumption Certificate issued by the Deputy Commissioner of Central Excise, Ludhiana and submits that the 'quantity delivered' mentioned in the certificate is not the quantity issued across the Customs barrier and the same can only be the quantity delivered at the appellant's factory and, in this view of the matter, the Consumption Certificate does not cover the differential quantity of 5.06 MT, in respect of which quantity the relevant condition under the notification has not been fulfilled. In this way, the learned DR would justify the demand of duty.

3. I have carefully considered the submissions. The short question which emerges from the submissions is whether Consumption Certificate issued by the Deputy

Commissioner of Central Excise, Ludhiana covers the quantity of scrap issued across the Customs barrier. In this respect, I am convinced that the expression 'quantity delivered' used in the certificate means the quantity issued across the Customs barrier. This is abundantly clear from the allied entries in the certificate, which shows the "quantity shipped", "quantity delivered" and "quantity consumed". The DR's submission that 'quantity delivered' should be understood as quantity delivered at the factory does not appeal to me inasmuch as the Department is not competent to certify such a quantity. What they are competent to say is regarding the quantity of goods delivered across the Customs barrier. Therefore, going by the Consumption Certificate, I hold that the entire quantity delivered across the customs barrier has been consumed in the induction furnace of the appellants. The relevant condition under the notification stands fulfilled. It is also pertinent to note, as rightly pointed by the Counsel, that the Department has no case that any part of the imported quantity was diverted by the party in any other manner whatsoever. The case of the appellants indeed stands on a stronger footing than the case of National Organic Chemical Industries. In the result, the impugned order is set aside and the appeal is allowed.

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