

Rathi Super Steels Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-29-2003

Reported in : (2004)(92)ECC279

Judge : A T V.K., P Bajaj

Appellant : Rathi Super Steels Ltd.

Respondent : Cce

Judgement :

1. The issue involved in this appeal, filed by M/s. Rathi Super Steels Ltd., is whether the Central Excise duty is payable by them on misrolls, which are obtained during the course of manufacture of bars and rods by them.
2. Shri M. Chandersekharan, learned Sr. Advocate, submitted that the appellants manufacture bars and rods and during the relevant period were discharging their duty liability under Compounded Levy Scheme as per the provisions of Section 3A of the Central Excise Act read with Rule 96ZP of the Central Excise Rules; that during the course of manufacture of bars and rods, there arise misroll and waste and scrap; that the Department has demanded the duty on the quantity of misrolls for the period from October 1997 to March 2000 under the show cause notice dated 3.10.2002 on the ground that the benefit of Notification No. 67/95 was not applicable as the final products were subject to duty under the Compounded Levy Scheme. The learned Sr. Advocate, further, submitted that the entire demand of duty is hit by the time limit specified in Section 11A of the Central Excise Act as

the extended period of limitation is not invocable; that the fact of misrolls, arisen during the course of manufacture of final product, was known to the Department as they had filed R.T. 12 return for the month of September 1997 in which they had clearly mentioned misrolls and they had also filed a declaration in lieu of classification list under their letter dated 4.8.97 in which they had specifically claimed the benefit of Notification No. 67/95 dated 16.3.95 in respect of misrolls obtained by hot rolling for captive consumption for the manufacture of iron and steel products; that in their reply to the show cause notice, the appellants had specifically referred to the said declaration filed with the Department; that, therefore, finding of the Commissioner, in the impugned order that they had never disclosed to the Department about claiming the benefit of Notification, is not correct.

3. Countering the arguments, Shri Virag Gupta, learned DR, submitted that the extended period of limitation is invocable in the facts and circumstances of the present matter as the appellants had never disclosed to the Department, during the period of October 1997 to March 2000, about the manufacturing of misrolls in their factory and captively using them in the manufacture of bars and rods; that they had also not disclosed to the Department that they were going to avail of the benefit of Notification 67/95-CE dated 16.3.95 in respect of misrolls; that the Department came to know all the details only when they directed the appellants to submit the details of production, clearance, value, etc.. of misrolls used captively.

4. We have considered the submissions of both the sides. Without going into the merits of the matter as to whether the duty of Excise is payable on misrolls or not, we agree with the learned Sr. Advocate, that the demand of duty is hit by time limit specified in Section 11A (1) of the Central Excise Act. The provisions of proviso to Section 11A (1) for demanding duty for the extended period can be invoked only in cases where the duty is not paid on account of fraud, collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or Rules with intent to evade payment of duty. The appellants had brought on record the fact that the production and clearance of misrolls, without payment of duty, was brought to the notice of the Department and they had filed the R.T. 12 return for the month of September 1997 and subsequently, they had filed

classification declaration under their letter dated 4.8.97 in which they had clearly claimed the benefit of Notification No. 67/95-CE in respect of misrolls captively consumed. In the light of these facts, it cannot be alleged by the Department that the fact of using misrolls captively in the manufacture of bars and rods, has not been brought to the notice of the Department. Accordingly, the extended period of limitation is not invocable. As the entire demand of duty is beyond the normal period of one year specified in Section 11A (1) of the Act, we set aside the impugned order and allow the appeal only on the aspect of demand being time-barred.

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