Cce Vs. Mamta and Co. and ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-12-2003

Reported in : (2004)(91)ECC219

Judge : A T V.K., P Chacko

Appellant : Cce

Respondent : Mamta and Co. and ors.

Judgement :

1. These are 17 appeals, filed by the Revenue arising out of Order-in-Appeal No. 52 to 68/AKG/PCK/2003 dated 28.2.2003 by which the Commissioner (Appeals) has set aside the adjudication orders in respect of respondents No. 1 to 15 and has set aside the penalty imposed on respondents No. 16 to 17.

2. Ms. Charul Baranwal, learned SDR, submitted that all the respondents purchase stainless steel flats on payment of duty, which are cut into small pieces and, thereafter, are hot rolled in the form of patta/patties; that the respondents/ thereafter, cut out circles, which are used within the factory for the manufacture of utensils; that some quantity of circles is also being sold in the open market; that the adjudicating authority confirmed the demand of duty in respect of the circles used captively in the manufacture of utensils and imposed penalties. On appeals, filed by the respondents, the Commissioner (Appeals), has set aside the demand of duty in respect of the respondents at Sl No. 1 to 15 on the ground that the demand is time-barred following the decision of the Tribunal in the case of M/s.

Jagatsons Industries v. CCE, New Delhi-Ill, 2002 (141) ELT 803 (Tri.-Del); that though the Commissioner (Appeals) has confirmed the demand of duty in respect of remaining two respondents, namely, M/s.

Unique Steels and M/s. K.L. Steel Rolling Mills, he has set aside the penalties, following the ratio of the decision in the case of Jagatsons Industries (supra). She, further, submitted that the respondents from 1 to 15, had suppressed the fact of production of exempted goods, namely, utensils by mentioning categorically NIL under the heading 'particular of other goods manufactured, produced and intended to be removed by the assesse' in the classification declaration filed by them; that as they had not disclosed the fact that circles were captively consumed by them in the manufacture of utensils and they were paying the duty on exempted circles, the extended period of limitation is invocable. She, finally, submitted that the decision in the case of Jagatsons Industries (supra) has not been accepted by the Department and a reference application has been filed before the Hon'ble High Court, which is yet to be decided.

3. On the other hand, Shri J.S. Agarwal, learned Advocate, relied upon the decision in the case of Jagatsons Industries (supra) and submitted that there was no supression of facts as the respondents have filed classification declaration with the Range Supdt, who personally/physically verified the process of manufacture; that they were also holding bona fide belief that the process of cold rolling does not amount to manufacture as held by the Supreme Court in the case of CCE, Chandigarh v. Steel Strips Ltd., 1995 (50) ECC 364 (SC) : 1995 (77) ELT 248 (SC). In respect of the respondents, namely, M/s. Unique Steels and M/s. K.L. Rolling Mills, the learned Advocate submitted that they had paid the duty on the circles which were captively consumed and such duty, already paid by them, should be adjusted against the payment of duty confirmed; that as held in Jagatsons Industries case (supra), no penalty is imposable on these two respondents.

4. We have considered the submissions of both the sides. The issue involved in all these appeals is similar to the issue, which stands settled by the Tribunal in the case of Jagatsons Industries (supra).

The Tribunal, therein, held that "in view of the various decisions of the Supreme Court and the Appellate Tribunal, it cannot be claimed that there was suppression of any fact by the appellants and larger period of limitation is not invocable. In view of the facts and circumstances of the case, we are of the view that no penalty is imposable on the appellants and set aside the same." The decision by the Tribunal in the case of Jagatsons Industries (supra), has been relied upon by the Commissioner (Appeals), while holding that the extended period of limitation is not invocable and setting aside the penalties. The mere fact that a reference application has been filed, is not sufficient for urging that the Commissioner (Appeals) should not have followed the decision of the Appellate Tribunal, while deciding the present matter.

We, therefore, find no infirmity in the impugned orders. Accordingly, the appeals, filed by the Revenue are rejected. As held by the Tribunal in Jagatsons Industries case (supra), the amount of duty, already paid by the respondents, M/s. Unique Steels and M/s. K.L. Rolling Mills, has to be adjusted towards the duty payable by them.