Casting Combines Vs. Collector of Customs and C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-30-1987

Reported in : (1989)(42)ELT501TriDel

Appellant : Casting Combines

Respondent : Collector of Customs and C. Ex.

Judgement :

1. This is an appeal against the order of the Additional Collector of Central Excise and Customs, Pune.

2. The brief facts of the case are the appellants manufactured castings and during the process of manufacture of castings, scrap in the form of skull scrap and runners and risers came into existence and same was captively consumed for re-melting or, in other words, scrap was re-cycled. No duty was paid on the scrap generated and used in the factory. The learned Consultant for the appellants pointed out that the duty was demanded for the period from 1-5-1979 to 4-6-1981 and that show cause notice was issued in the matter on 25-1-1982. He has pleaded that the demand was time-barred. He has stated that the longer period for recovery of the duty has been invoked in terms of Rule 9(2) read with Section 11A of the Central Excise Act, 1944. He has cited 1984 (18) ELT 319 in the case of Lattubhai Amichand Ltd., Bombay v.Collector of Central Excise, Bombay, wherein, according to him, it has been held that once an activity was in the knowledge of the department, the longer time limit for raising demand should not be invoked. He pleaded that the appellants are manufacturers of castings and the process of

casting necessarily involves generation of the scraps stated to have been manufactured and cleared by them, without payment of duty.

He has pleaded that the question of chargeability of duty has been engaging the attention of the Government and department for a long time. In support of this, he cited the budget instructions issued by the Government vide circular No. 5 of 1973, dated 25-4-1973. For convenience of reference, the same is reproduced below :- "Assessment of Steel Castings manufactured with the aid of Electric furnace out of old scrap - clarification regarding - In the 1973 budget, steel castings produced with the aid of electric furnace out of old scrap have been subjected to an effective basic duty of Rs. 50/- per metric tonne (vide Notification No. 67/73) - Certain points have been raised by Steel Furnace Association of India regarding the excise levy on steel castings. These are briefly indicated below along with necessary clarification thereon.

(1) Point raised: Excise authorities are not permitting the usage of interna in scrap generated in electric furnace units for further manufacture of steel castings on the ground that the internal scrap is not old iron or steel melting scrap but is fresh scrap on which duty has not been paid. As per Notification No. 67/73 for eligibility to reduction of Rs. 50/- per metric tonne in the rates of basic duty specified against Serial Number 4(b) of the table annexed to the notification (relating to steel castings), these castings should be manufactured out of old iron or steel melting scrap or a combination of such scrap out of old iron with fresh unused duty paid steel melting scrap on which duty has not been paid steel castings made the reform will not be eligible for the concessional rate prescribed in the aforesaid notification.

(2) Clarification : The internal scrap generated is in the nature of circulating scrap arising in the course of manufacture of steel castings as well as machining of steel castings. The basic raw material is either old iron or steel melting scrap or duty paid fresh scrap in combination with old scrap. Even if such internal scrap is charged to duty, by virtue of Notification No. 17/71, the duty so paid would have to be given as set off against the duty paid on steel castings. Hence, there would be cyclical collection of duty and the grant of set off in the process. It is therefore,

desirable from the practical point of view that internal circulating scrap arising in the course of manufacture of steel castings should be permitted to be mixed along with old scrap and treated as eligible for the concessional rates prescribed in the notification. If, however, such internal scrap is sought to be cleared out of the factory, appropriate duty is recoverable." He pleaded that it is, therefore, well-known and was in the knowledge of the Government and it can be presumed was within the knowledge of the jurisdictional departmental authorities that the scrap was generated and used in the manufacture of castings and therefore, the question of invoking provision of Rules 9(2) and 11A would not arise in their case. On merits, he pleaded in their judgment in the case of 1983 ELT 1947 Tribunal has held that the scrap generated when the duty paid steel melting scrap is used for castings, no duty is leviable on this as no new article emerged. The relevant portion of the order is extracted below for convenience of reference : "Scraps arise during the course of manufacture of steel ingots and steel castings from duty paid scrap not dutiable again - Section 2(f) of Central Excise Act - Item 26B of Central Excise Tariff and Rule 173 of the Central Excise Act, 1944 when steel scrap is melted and cast into ingots and other forms in the appellants factory further steel scrap is generated, which is produced out of scrap.

Since the original scrap is duty paid under Item 26B of Central Excise Tariff, therefore, duty is not leviable on the fresh scrap arising in the production of steel ingots and castings under the same item as no article has emerged which would amount to manufacture under Section 2(f) of the Central Excises Act.

Therefore, imposition of penalty under Rule 173Q of the Central Excise Rules, was not impossible." He has stated that steel melting scraps has been manufactured from duty paid ingots or scraps and no set off has been claimed in respect of this and therefore in terms of Notification 54/64 no duty was leviable in case of scrap generated in the casting process. On a query from the bench, however, he has stated that he is not in possession of the facts as to whether the goods had been manufactured out of the duty paid ingots or scrap and also as to whether the proforma credit had been claimed by them or not. He further stated that benefit of this notification had been claimed before the lower authority. At this stage, Smt. Zutshi the learned SDR, stated that from the original records with her it is seen

that during the personal hearing a claim had been made in terms of Notification No. 54/64 and the Additional Collector failed to take notice of this claim nor he has dealt with this plea for benefit of the said notification in his order.

3. We propose to first examine the issue of the time-bar raised by the appellants. The learned SDR for the department pointed out that this point has been raised by the appellants for the first time before the Tribunal but stated that being a legal point this could be raised even at this stage. She also stated that so far as show cause notice is concerned there is no allegation of fraud or suppression of facts on their part with a view to evade duty spelt out thereon. We observe that the Additional Collector in this regard has stated in his order that the appellants were producing the goods falling under T.I. 26AA of the CET and had presented the classification list for that item and that the department was not able to know as to what were their by-product and intermediary product unless declared. He, in short, has held that the appellants produced the goods in question without any intimation to the department and the department was kept in the dark. It is not denied that the appellants were manufacturing castings. The Central Excise authorities who exercised jurisdiction over the appellants factory must have visited the factory for various purposes and it is expected that they would have examined the process of manufacture of castings and the knowledge of manufacture scrap can be attributed to the authorities. The appellants have apparently acted under the bona fide belief that since they were re-cycling the scrap, no duty was to be paid in regard to the same. We observe that there are no allegation of fraud or suppression of facts with a view to evade duty in the show cause notice. In the above view of the matter, we hold that the extended time limit beyond six months cannot be invoked in the facts and circumstances of the case. The demand is therefore, hit by limitation and the lower authorities order in this regard is set aside.

Appeal is allowed in the above terms. Inasmuch as the case has been decided on the limitation point alone, we do not feel it necessary to give our findings on other points raised.