

Prachi Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-05-2004

Reported in : (2004)(176)ELT875TriDel

Judge : S Kang, a T V.K.

Appellant : Prachi Industries

Respondent : Cce

Judgement :

2. Appellants filed this appeal against the Adjudication order passed by the Commissioner of Central Excise.

3. The issue involved in this appeal is whether process of swaging undertaken by the appellants on mild steel tubes amount to manufacture.

we find that this issue is already decision by the Tribunal in the appellant's own case CCE, Chandigarh-I Vs. M/s. Prachi Industries vide Final Order No. 3-7/2002-B dated 4.1.2002. In this case of Tribunal held that the process of swaging undertaken by the appellants on mild steel tubes amounts to manufacture and liable for central excise duty.

In view of this decision of the Tribunal, we uphold the impugned order in this regard.

4. The contention of the appellants is also that they are entitled for modvat credit in respect of the inputs used in the manufacture of the final products and they are also entitled for abatement of duty in view of the decision of the Hon'ble Supreme court in the case of CCE, Delhi Vs. Maruti Udyog Ltd., reported in 2002 (141) ELT-3.

5. We find that as now duty is confirmed, therefore, the appellants are entitled for the modvat credit in respect of the inputs used in the final products on production of necessary duty paying documents and also entitled for abatement of element of duty from the sale price as per decision of the Hon'ble Supreme Court in the case of Maruti Udyog Ltd. (Supra).

6. The Commissioner of Central Excise imposed penalty of Rs. 68 lacs on the appellants. We find that dispute in respect of process undertaken by the Appellate was held not amounting to manufacture by the Commissioner (A) vide Order-in-appeal No. 310-314 dated 29.6.2001 against which the Tribunal allowed the appeal filed by Revenue. In such situation, it can not be said that the appellant has any intention to evade duty, hence penalty is not sustainable. The penalty imposed by Commissioner of Central Excise is set aside.

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