

**Akar Tools Ltd. Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Feb-19-2004

**Judge :** K Usha, N T C.N.B.

**Appellant :** Akar Tools Ltd.

**Respondent :** Cce

**Judgement :**

1. In this appeal at the instance of the assessee, challenge is against the order passed by Commissioner (Appeals) dated 17.1.97. Commissioner (Appeals) reversed the order passed by the Assistant Commissioner of Central Excise approving the classification list submitted by the appellant granting them the benefit of Notification No. 13/86-Cus.

Dated 9.2.86, as amended and read with Notification No. 83/90-Cus.

Dated 20.3.90. Commissioner (Appeals) took the view that two rates were applicable in respect of the goods concerned and therefore, by applying the provisions contained in Explanation to Section 3 of the Central Excise & Salt Act, 1944 the highest rate of duty at 50% ad valorem has to be applied. Aggrieved by the above the assessee has come up in appeal.

2. Appellant is a 100% Export Oriented Unit (EOU) manufacturing hand tools. They filed two classification lists effective for the periods from 22.2.94 and 1.3.94 before the Assistant Commissioner of Central Excise, Aurangabad classifying their

products as waste and scrap of other alloy steel under sub-heading 7204.30 of Central Excise Tariff Act, 1985. The Assistant Commissioner approved the classification lists granting benefit of Notification No. 13/86 dated 9.2.86 as amended by Notification No. 83/90 dated 20.3.90. The rate of duty approved the Assistant Commissioner was 15% ad valorem. The above order was challenged by the Revenue before the Commissioner (Appeals) contending that Notification No. 62/94 is not applicable to 100% EOU in view of proviso to Section 5A of Central Excises & Salt Act, 1944, that Notification No. 101/93-CE was applicable to 100% EOU and that at the relevant time there were two rates of Customs duty applicable i.e.

normal rate 50% ad valorem and 10% ad valorem. When duties are leviable at two different rates, going by the Explanation under Section 3 of the Central Excise & Salt Act, 1944 highest of those rates shall be applicable. As mentioned earlier, the Commissioner (Appeals) allowed the appeal filed by the Revenue.

3. It is contended on behalf of the appellant that the Commissioner (Appeals) has erred in denying the benefit of Customs Notification No.83/90 dated 20.3.90 to waste and scrap manufactured and cleared to Domestic Tariff area by the appellant. According to the appellant, the view taken by the Commissioner (Appeals) is against the ratio of the decision of the Hon'ble Supreme Court in Goodyear India Ltd. v. CC, Bombay 4. Notification No. 83/90 dated 20.3.90 exempts melting scrap of iron or steel (other than stainless steel or heat resisting steel) falling under Heading 72.04 of the 1st Schedule to the Customs Tariff Act, 1975, when imported into India for use in electric arc furnace or induction furnace from so much of that portion of the duty of Customs leviable thereon which is specified in the 1st Scheduled to as is in excess of the amount calculated at the rate of 20% ad valorem.

5. In view of the Ministry's Circular F.No. 305/83/94-FTT dated 15.9.94 it has to be taken that the appellant which is a 100% EOU is entitled to benefit of Notification No. 83/90 when it clears goods manufactured by it to domestic tariff area. We find that the appellant is fully justified in its submission that the view taken by the Commissioner (Appeals) is directly in conflict with the ratio of the decision of the

Supreme Court in Goodyear India Ltd. v. CC, Bombay. Appellant's case is not a case where there are two rates of duty provided so that the Explanation under Section 3 would be applicable. On the other hand, the rate of duty has to be calculated after granting the appellant the benefit of the exemption under Notification No. 83/90.

6. In the light of the above, we set aside the order impugned and allow the appeal.

Operative part of the order already pronounced in the open Court on 14.1.2004.

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