Cce Vs. Birla Ericsson Optical Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-16-2004

Judge : A T V.K., M Bohra

Appellant : Cce

Respondent : Birla Ericsson Optical Ltd.

Judgement :
1. The issue involved in this appeal is whether the extended period of time limit is invokable for demanding Central Excise duty from M/s.

Birla Ericsson Opticals Ltd. 2. Shri H.C. Verma, learned D.R., Submitted that the Respondents M/s.

Birla Ericsson Opticals Ltd. Manufacture PIJF Telephone Cable and Optical Fibre Cable and they availed of Modvat Credit of the duty paid on inputs; that the Additional Commissioner under Order-in-Original No.51/2002 dated 28.03.2002 has confirmed the demand of duty on katchra scrap invoking the extended period of limitation; that the Commissioner (Appeals) under the impugned Order has set aside the demand being time barred holding that the matter was not entirely free from doubt in view of a number of judgments about the exciseability of waste and scrap.

The learned D.R., further, submitted that the Respondents had cleared the scrap during January, 1997 to November, 1997 without filing the classification list and without observing Central Excise procedure and as such extended period of limitation is invokable; that it has been held in the case of Swil Ltd. vs. CCE, 2003 (154) ELT 288 that each and every assessee is required to file a classification list under Rule 173B of the Central Excise Rules, 1944 at the material time declaring the goods manufactured by them; that in absence of any such classification list being filed by the Respondents extended period of limitation is invokable.

3. Ms. Rohina Nath, learned Advocate, countered by submitting that Klatchra Scrap contained copper, lubricant, grease, water filter paper and other wastes; that merely the scrap may fetch some sale price it does not become marketable product; that it has been held in a number of cases including Finolex Cables Ltd. Vs. CCE, 1998 (100) ELT 517 that waste and scrap arising during the manufacture of telecommunication cable is not excisable; that in view of this decision of the Tribunal about the non-exciseability of the impugned waste and scrap the extended period limitation cannot be invoked.

4. We have considered the submissions of both the sides. The show cause notice in the present case has been issued on 12.05.2000 for demanding the duty for the period January, 1997 to November, 1997. The show cause notice thus has been issued beyond the normal period of limitation specified in Section 11A(1) of the Central Excise Act. The Commissioner (Appeals) had held the demand to be time barred as the exciseability of the scrap in question was in dispute during the material period. The Department has not contravened the said finding of the Commissioner (Appeals). The Appellate Tribunal has held in the case of Finolex Cables Ltd. that waste and scrap of Telecommunication cable is not excisable. In view of these facts no malafide intention could be attributed to the Respondent. In absence of any malafide intention extended period of limitation not invokable. We, therefore, reject the appeal filed by the Revenue.