Commissioner of Central Excise Vs. Nityanand Engineering Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-11-2004

Reported in : (2004)(178)ELT193Tri(Mum.)bai

Judge : K Kumar, M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Nityanand Engineering Pvt. Ltd.

Judgement :

1. This is revenue's appeal against the order-in-appeal passed by the Commissioner (Appeals). Vice the impugned order the appeal of the respondents was allowed. The appeal of the revenue challenges the decision of the Commissioner (Appeals) and seeks restoration of the order of the adjudicating authority. The respondents have filed written submissions in support of the findings contained in the order of the Commissioner (Appeals).

3. The respondents are engaged in the manufacturer of steel structural viz ladders, liners and gratings, out of iron and steel supplied free of cost to them by their customer M/s. L & T, on job work basis. The Commissioner (Appeals) reversed the order of the adjudicating authority and held these as not liable to duty, on the ground that these goods would be covered under heading No. 73.08 as "structures and parts of structures", and these would be fully exempt from Central Excise duty under Notification No. 41/94 CE. The revenue appeal disputes this findings by claiming that, the benefit of the Notification No. 41/94-CE was

granted on wrong presumption that the goods have been manufactured at site for subsequent fixation to an immovable property. It is asserted that these items are fabricated in the factory and thereafter transported to the site for fixing to the immovable structure.

4. In this connection the revenue have placed reliance on Board's circular F.No. 139/8/87-CX4 dated 5.1.1988 which clarifies that duty paid sheets, angles channels, beams flats etc, which were being subjected to various processes for preparing columns and trusses, which go into erection of sheds or erected structures are not immovable goods and clearly fall under sub Heading No. 7308.90 of the Central Excise Tariff Act.

5. As against this, the respondents are pleading that, there is no specific finding of the adjudicating authority as to under which heading No. the impugned goods are classifiable in the absence of which no duty liability can be quantified. It was also pleaded that the respondents merely out the material into the required size, bending and tag welding does not change the character of the material received by them, namely plates, channels and angles. The demand was also challenged on limitation.

6. We have carefully considered the rival contentions. It is not disputed that the goods are fabricated in the factory first and thereafter transferred to the respective site. Hence the ground of "manufacture at site" was erroneously applied by the Commissioner (Appeals) to set aside the order of the adjudicating authority.

Therefore the impugned order passed by the Commissioner (Appeals) is not sustainable. However, we also note that the respondents also advanced very substantial grounds to challenge the liability to duty confirmed by the adjudicating authority. We accordingly hold that, this matter needs to be remanded back to the adjudicating authority, for passing fresh orders on merits.

7. Accordingly we allow the revenue appeal by remanding the matter to the adjudicating authority for passing fresh orders, after following the principles of natural justice. The orders of the lower authorities are consequently set aside.