

Commissioner of C. Ex. Vs. Sarda Steels Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-25-2004

Reported in : (2004)(170)ELT182TriDel

Judge : A T V.K., M Bohra

Appellant : Commissioner of C. Ex.

Respondent : Sarda Steels Industries Ltd.

Judgement :

1. The issue involved in this appeal, filed by Revenue, is whether benefit of Notification No. 49/97-C.E., dated 1-8-1997 is available to the waste and scrap of iron and steel lying in stock as on 1-9-1997 with M/s. Sarda Steels Industries Ltd.

2. When the matter was called, none was present on behalf of the Respondents nor there was any request for adjournment in spite of Notice. We observe that no one was present earlier also when the appeal was posted for hearing on 19-2-2004. We, therefore, take up the appeal for disposal after perusing the records and hearing the learned SDR.

3. Mrs. Charul Baranwal, learned SDR, submitted that the Respondents manufacture M.S. Bars which attracted duty on the basis of annual capacity of production since 1-9-1997 under Section 3A of the Central Excise Act; that the waste and scrap generated during the course of manufacture of M.S. Bars was exempted under Notification No. 49/97-C.E. made effective from 1-9-1997; that as the Respondents cleared recorded balance of 22.050 M.T. of waste and scrap as on 1-9-1997 availing the exemption under Notification No. 49/97, the Assistant Commissioner under Order-in-Original No. 27/2000, dated 11-

9-2000 demanded the duty and imposed penalty on the ground that Notification No. 49/97 exempts only the waste and scrap generated during the course of manufacture by units working under compounded levy scheme under Section 3A and the waste and scrap lying in balance on 1-9-1997 is not such a waste and scrap; that, however, Commissioner (Appeals), under the impugned Order, has set aside the Adjudication Order holding that the contention of the Revenue that the exemption would only be available to the waste and scrap generated subsequently after issue of Notification is misplaced.

She, further, submitted that the Commissioner (Appeals) has referred to Para 4(g) of Circular No. 327/43/97-C.E., dated 1-8-1997 which reads as follows :- "It has been decided to exempt waste and scrap arising in the course of manufacture of ingots and billets (in the case of induction furnaces) as also the waste and scrap arising in the course of production or manufacture of hot re-rolled products (in the case of hot re-rolling mills), from whole of excise duty Notification No. 49/97-CE refers." 4. She mentioned that the said Para relates to exemption of waste and scrap arising in the course of manufacture of ingots in an induction furnace unit and hot re-rollable product of non-alloy steel in a hot re-rolling mill on which duty is paid under Section 3A of the Act; that Para 4(f) is in fact the Para of the Circular which is applicable as it provides that the waste and scrap lying with the induction furnace units or re-rolling units as on 1-8-1997 will be liable to duty at 15% Adv.5. We have considered the submissions of the learned SDR and perused the records. The waste and scrap in question was in stock with the Respondents when the duty on the basis of Annual Capacity of Production under Section 3A of the Central Excise Act was introduced with effect from 1-9-1997. Notification No. 49/97-C.E., dated 1-8-1997 provides exemption to waste and scrap when such waste and scrap arises in the course of manufacture or production of ingots and billets in an induction furnace unit or hot re-rolled products of non-alloy steel in a hot re-rolling mill, on which the duty of Excise is paid under Section 3A of the Central Excise Act. Thus for the application of this Notification, the waste and scrap should arise in the course of manufacture of specified products on which duty is paid under Section 3A of the Act. The impugned waste and scrap has arisen during the course of manufacture of goods when the duty of Excise was payable under Section 3 of the Act and not under Section 3A of the Act.

Secondly even after the introduction of Compounded Levy Scheme, the duty is payable on these final goods not under Section 3A of the Central Excise Act. Thus the conditions specified in the Notification are not satisfied in respect of the waste and scrap in question.

Accordingly the benefit of Notification No. 49/97-C.E. is not available to the impugned waste and scrap. We, therefore, uphold the demand of duty. No penalty is imposable as the issue relates to interpretation of the Notification.

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