

Haryana Wire Products Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-14-2004

Reported in : (2004)(97)ECC650

Judge : A T V.K., P Bajaj

Appellant : Haryana Wire Products

Respondent : Cce

Judgement :

1. In this appeal, M/s. Haryana Wire Products, the Appellants, are challenging the confiscation of copper wire, duty demanded thereon, confiscation of copper rods and duty thereon and penalty imposed on them.

2. Shri Naveen Mullick, learned Advocate, submitted that the appellants manufacture copper wire out of copper rods; that when the Central Excise Officers visited their factory premises on 4.6.98, they intercepted one tempo loaded with 8 rolls of copper wire standing in front of their factory gate; that the officers had also found another 18 bundles of copper rods lying near the factory gate; that one, Shri Praveen Kumar, son of Shri Mahavir Prasad, proprietor of the unit, could not produce the duty-paying documents in respect of both copper wire and copper rods; that, subsequently, the Assistant Commissioner has passed the order confiscating the copper rods, copper wire, etc., which had been upheld by the Commissioner (Appeals) under the impugned order. The learned Advocate, further, submitted that, subsequently, they came to know about the decision of the

Supreme Court in the case of CCE v. Technoweld Industries, 2003 (155) ELT 209 (SC), wherein it has been held that drawing wires from rods does not amount to manufacture; that following the said decision, the Tribunal in the case of Shri Nankoo Tiwari v. CCE, Allahabad, vide Final Order No.A/36-37/04-NB(C) has held that re-drawing of copper wires from copper rods does not amount to manufacture. He, therefore, contended that as the activity undertaken by them does not amount to manufacture, no offence has been committed by them making their goods liable for confiscation or for demand of duty, etc.

3. On the other hand, Shri Vikas Kumar, learned SDR, submitted that the appellants have taken this plea of their activity not amounting to manufacture, for the first time before the Tribunal; that this aspect has not been examined by the Adjudicating Authority; that, further, in respect of the copper rods found near the factory gate of the appellants, they could not produce any duty-paying document; that, therefore, the contention that these copper rods were purchased from M/s. Bhawani Steels Pvt. Ltd., has been found to be wrong, as Shri Manoj Kumar Jain, Director of M/s. Bhawani Steels Pvt. Ltd., in his statement, has deposed that the seized product was not sold by them and they had not made any sales to the appellants during the period from 1.6.98 to 4.6.98, 4. We have considered the submissions of both the sides. It is not in dispute that the appellants are engaged in the activity of making copper wire from copper rods, This fact is also mentioned in the show cause notice issued to the appellants, wherein it is clearly mentioned that "the unit is a sole proprietorship registered with the Central Excise and engaged in the manufacture of copper wire from copper rods".

The Supreme Court in the case of Technoweld Industries (supra) has held that "there is no manufacture of a new product" from a wire rod to wire. The Supreme Court has, further, held "merely because there are two separate entries, does not mean that the product becomes excisable.

The product becomes excisable only if there is manufacture". This aspect, whether the process undertaken by the appellants amounts to manufacture or not, has not been considered by the Adjudicating Authority as the same was not raised before him. In view of this, we set aside the impugned order and remand the matter to the

Adjudicating Authority to consider whether the process, undertaken by them, amounts to manufacture or not in the light of the judgment of the Supreme Court in the case of Technoweld Industries (supra). The Adjudicating Authority will then re-adjudicate as to whether any of the goods, under seizure, are liable for confiscation and whether any duty and the penalty or both have to be imposed on the appellants. The appeal is allowed by way of remand.

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