

Collector of Central Excise Vs. Universal Cables Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-03-1987

Reported in : (1987)(31)ELT828TriDel

Appellant : Collector of Central Excise

Respondent : Universal Cables Ltd.

Judgement :

1. The Department has filed this Appeal against the order of the Collector (Appeals), New Delhi, dated 11-2-1983. The point at dispute in the present case is whether Aluminium Dross and Skimmings would attract duty under Item 68 of the Central Excise Tariff. The Assistant Collector held that Aluminium Dross and Skimmings are dutiable under Tariff Item 68 and confirmed the demand of Rs. 2,960.60 and Rs. 2,046.88. On appeal, the Collector (Appeals) held the view that Dross and Skimmings are merely the scum thrown out in the process of manufacture of aluminium sheets and it cannot be said that Dross and Skimmings are transformation resulting in a new and different article.

He held that they are not liable to duty under Item 68.

2. Shri J.N. Nigam, Senior Departmental Representative, submitted that the appellate authority has placed reliance on the decision of the Bombay High Court in the case of Indian ' Aluminium Company v. A.K.Bandopadhyay (1981 E.L.T. 3-146). He urged that the ratio of that ruling will not apply after the amendment of Tariff Item 27, whereby an explanation has been added under the Finance Act,

1981. Since Dross and Skimmings have been set out in the Explanation, duty under Item 68 would be attracted. He relied on the decision of the Supreme Court in the case of Khandelwal Metal and Engineering Works 1985 (20) ELT 222.

The argument was that Dross and Skimmings are incidental products arising in the manufacture of aluminium sheets and duty liability cannot be avoided. He also relied on the decision of the Tribunal reported in 1987 (29) ELT 324 [C.C.E., Guntur v. Andhra Pradesh State Electricity Board]. The Tribunal held that Fly-ash is a necessary incident of the manufacturing process and was liable to duty under Tariff Item 68. He relied on the decision of the Tribunal (Order Nos.

793 & 794/85-C, dated 16-12-1985) in the case of H.M.T., Hyderabad v.C.C.E., Hyderabad. In 1982 ELT 937, the Allahabad High Court held in the case of Oudh Sugar Mills that by products or intermediate or residual products in the manufacture of goods would be covered by the word "production".

3. Shri Khaitan, the Learned Counsel, for the Respondents, relied on Order No. 44/87, dated 23-1-1987 (Hindustan Aluminium Corporation v.C.C., Allahabad) where the Tribunal has held that Aluminium Dross and Skimmings are not "goods". He urged that since it is a direct decision, the same principles would apply.

4. We have carefully considered the contentions of both the parties. We agree with Shri Khaitan that an identical product was the subject matter of decision of Order No. 44/87. The Tribunal relied on the decision of the Bombay High Court in the case of Indian Aluminium Company (cited supra) and also the decision in 1984 (4) ETR 754 [C.C.E., Chandigarh v. Mehra Ferro Alloys]. In this connection, we notice that the Tribunal has taken the view consistently that Dross and Skimmings are not liable to duty. In an earlier decision [C.C.E., Bombay v. Anam Electrical Manufacturing Company] in Order No.567/86-B1, dated 9-9-1986, the" Tribunal had an occasion to consider the question of excisability of dross and skimmings and held that they could not be assessed to duty under any item of the Tariff. Again in the case of Mysore Rolling Mills v. C.C., Bangalore (Order No. 64/87, dated 18-6-1987), the two Members, who heard the case, differed in the decision and the matter was ultimately resolved by the Hon'ble President, who held that dross and skimmings are not "goods". In that case also an argument was

advanced that by virtue of Explanation-III dross and skimmings by virtue of their exclusion would attract duty under Item 68. This argument was not accepted and the decision in the Indian Aluminium, which was the direct decision on the point was followed. The decision of the Supreme Court in Khandelwal Metal and Engineering Works and Anr. v. U.O.I. and Ors. 1985 (20) ELT 222 was in respect of brass scrap and the observations of the Supreme Court were applied to the facts of that case and the product involved. The Hon'ble President has observed "I do not, however, think that it would be proper to rely on the general observations of the Hon'ble Supreme Court in this case...as overruling the specific decision of the Bombay High Court in the case of aluminium dross and skimmings". The other decisions cited by the S.D.R. before us are not applicable because the products are different and the general observations made therein would not justify taking a different view from the decision of the Hon'ble Bombay High Court. We respectfully follow the decision of the Bombay High Court in the case of Indian Aluminium, which has considered the identical issue from the basic concepts of excisability. We do not accept the argument that the amendment of the Tribunal would make a difference.

5. In view of the above observations, we follow the earlier rulings of the Tribunal in respect of "dross and skimmings" and reject the Appeal.

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