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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-27-2004

Reported in : (2004)(174)ELT231Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Cen. Excise

Respondent : Crompton Greaves Ltd. and ors.

Judgement :

1. The respondents herein are engaged in the manufacture of electrical stampings and laminations falling under CET sub-heading 8312.00, availing modvat credit of duty paid on silicon electrical sheets/hot rolled sheets/cold rolled sheets received by them for the manufacture of their final products. They cleared cut sheets arising during the course of manufacture of their final product, as waste and scrap under CET sub-heading 7204.00 on payment of duty as applicable to waste and scrap for the period November, 1991 to March, 1994. In view of the fact that the cut sheets were sold to manufacturers of similar final products (although of smaller sizes) and that they were being sold at the prices much higher than the prevailing market price for ferrous waste and scrap, the department alleged that the cut sheets were required to be cleared on payment of duty applicable under Chapter Heading 7208, 7209 and 7211. On this basis, duty demand of Rs. 91,24,646 being short payment of duty on 4876.534 M.Ts. of cut sheets (cleared on payment of duty of Rs. 54,90,103/- and on which credit of Rs. 1,46,14,749/- was availed) was raised by issue of notice dated 26.11.96 covering the period from 1.11.91 to

31.3.94. The extended period of limitation was invoked on the ground of willful mis-statement and suppression of facts in intention to evade payment of duty. The notice also proposed penalty upon the assessee under Section 11AC and upon the purchasers under Rule 209A on the ground that they had dealt with the goods, which they knew were liable to confiscation. 47 other show cause notices within the normal period of limitation, covering the period from April, 1994 to July, 1997, for an amount of Rs. 5,02, 80,773/-were also issued to the assessee on the same lines.

2. All the show cause notices were adjudicated by the Commissioner of Central Excise, Mumbai, who dropped the demands as well as penal action, against the assessee and purchasers of cut sheets by accepting contention that the issue stood covered in their favour in the judgment of the Tribunal in the case of CCE,Meerut v. Poysha Indl. Co.

[1997(93)ELT 445(T), in which it was held that metal waste and scrap from the manufacture/mechanical working of metals would have to be treated as waste and scrap as per Note 6(a) to Section XV of the Central Excise Tariff and that merely because it can find some use, it cannot be said that the metal will go out of the definition of waste and scrap. Hence these appeals by the Revenue.

3. We have heard both sides. The Id. SDR has relied heavily upon the Tribunal's decision in Bajaj Auto Ltd. v. Collector of Central Excise, Pune(Tri) and Bajaj Tempo Ltd. v. Collector of Central Excise, Pune (1997(89)E.L.T.752(Tri)) to support his contention that not only are the cut sheets not waste and scrap within the meaning ascribed thereto under the Tariff as amended, but they are sheets and therefore, duty was payable at the rate at which credit was taken viz.

at the rate payable on sheets. However, we find that the Bajaj Tempo Ltd. decision follows the Tribunal's decision in Bajaj Auto Ltd. as well as the Tribunal's decision in L.M.L.Ltd. v. CCE,Kanpur (1989(44)E.L.T.119) which has been reversed by the Apex Court in 1997(94)E.L.T.273(S.C.)[L.M.L.Ltd. v. CCE,Kanpur). The Bajaj Auto and Bajaj Tempo decisions therefore stand implied overruled. The Supreme Court has held that although, portions of cut steel sheets used in the manufacture of ancillary items cannot be regarded as waste and scrap as per the definition

ascribed thereto and scrap in Chapter 72 of the Schedule to the CETA 1985, they do not fall under the category of sheets as per the definition thereof in Chapter 72. According to the definition, a sheet is "a hot or cold rolled flat product, rolled in rectangular section of thickness below 5 millimeters and supplied in straight length, the width of which is at least hundred times the thickness and the edges are either milled, trimmed, sheared or flame cut" The Supreme Court held that it was not disputed that the off-cuts which remains after parts of scooter had been manufactured by using the steel sheets no longer retain rectangular shapes but were of different shapes and sizes. On this basis, the Apex Court held that the off-cuts would fall under Tariff Entry 72.10, the rate of duty payable on which was Rs. 365/- per Ton which is the same as that on waste and scrap of steel under Tariff Entry 7203.20 and that the appellants were required to pay only Rs. 365/- per Ton on the off-cuts cleared by them for use in the manufacture of ancillary items. The decision of the Supreme Court has been followed in *Kirloskar Electric Company Ltd. v. CCE, Bangalore* [2002(144)E.L.T.647], wherein it has been held that left over inputs viz. sheets in coil form de-coiled, cut to requisite sheet length and used for making stamping were not inputs cleared "as such" but after processing and therefore, the question of determining duty under Rule 57F(1)(ii) ie. considering such processed remainder input removals to be the removal of inputs, does not arise. The same view has been expressed in *Universal Cans and Containers Ltd. v. CCE, Mumbai* [1999(108) E.L.T.434] wherein the Tribunal held that left over materials of tin sheets for punching metal containers were not classifiable under the same Heading as the unused tin sheets. In the case of *CCE, Indore v. National Steel Inds. Ltd.* [2001(45)RLT 749] the Tribunal set aside the duty demand raised on Hot rolled coils, treating them as off-cuts of hot rolled coils, holding that the goods in question, while not waste and scrap, cannot be treated as the inputs themselves viz. H.R. Coils. Removal of processed inputs cannot be equated with removal of inputs as such and this being so, there is no requirement of payment of duty at the rate applicable to the inputs themselves viz. sheets. At this stage, it is pertinent to note that, in the grounds of appeal before the Tribunal, the averment of the Revenue is that the punched - cut sheets are of irregular dimensions. The ratio of the Apex Court judgment in *LML Ltd.* is thus squarely applicable to the present case. Viewed from this angle, we see no merit

in the contention of the Revenue that the clearance of the used sheets had to be effected only on payment of duty of an amount equal to the amount of credit availed on sheets. We, therefore, see no reason to interfere with the impugned order and accordingly uphold the same and reject the appeals.

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