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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-30-2004

Reported in : (2005)(179)ELT152TriDel

Judge : S Kang, Vice-

Appellant : Usha India Ltd.

Respondent : Commissioner of Central Excise

Judgement :

2. Appellants filed this appeal against the order-in-appeal passed by the Commissioner (Appeals). The demand is confirmed on the ground that appellants cleared the Waste Scrap of Copper more than the waste allowed by the Competent Authority.

3. The appellants are engaged in the manufacture of transistors and on the request filed by the appellants, waste norms was fixed by the Proper authority under the Ministry of Industries. According to the permission the wastage in respect of inputs, Copper dust and Bottom lead, is 52.5% of inputs. In respect of the Epoxy, the wastage of 59.7% of inputs is allowed.

4. The contention of the appellants is that the wastage which is not disputed, also contains some soldering elements, which is of nickle and this fact is not disputed by the Adjudicating authority. Even on verification, it was found that some solder contents were coated on the Bottom length of the copper. The contention is that,

before the Adjudicating Authority, the appellants specifically pleaded that the solder contents are of 0.07 Gms. per Bottom of lead and if, this quantity excluded from the Copper contents than wastage levels are within the permission granted by the Competent Authority.

5. The contention of the Revenue is that total wastage is allowed by the Competent authority upto the limit of 52.5% of the inputs and in the present case the appellants cleared this wastage more than this, therefore, duty was rightly demanded.

6. The Competent authority under the Department of Industrial Policy and Promotion, and Secretariat for Industrial Approvals vide letter dated 5-12-1995 allowed the wastage of 52.05% on inputs of Copper dust and Bottom length. The Adjudicating authority while confirmed the demand held that percentage norms of 52.5% of inputs have been fixed as wastage and not Copper waste, The waste includes of all types of wastage as such it includes the waste in the form of solder contents also and this finding is upheld by the Commissioner (Appeals). As the Competent authority fixed the wastage of 52.5% of Copper dust and Bottom length, therefore, the finding that this ratio is fixed of all the wastage, is not sustainable. Before Adjudicating authority specifically pleaded that 0.70 Gms. is solder contents on each Bottom length and, if, this quantity is taken into consideration, than the wastage of Copper dust and Bottom length is within the permissible limit. In these circumstances, as the authority below, considered the limit in respect of all wastage, is not in accordance with the permission granted. Therefore, the impugned order is set aside and the appeal allowed.