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**Arihant Steels Vs. Cce**

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**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Sep-17-2004

**Reported in** : (2005)(98)ECC359

**Judge** : S Kang, Vice-, V Agrawal

**Appellant** : Arihant Steels

**Respondent** : Cce

**Judgement** :

1. In this appeal, filed by M/s. Arihant Steels, the issue involved is whether the benefit of Notification No. 16/2000-Cus (Serial No. 169) is available to the goods imported by them and whether the extended period of limitation is invocable for the purpose of demanding the Customs duty.

2. Shri P.C. Jain, learned Advocate, submitted that the appellants manufacture, inter alia, ferro alloys ingots; that Serial No. 169 of the Notification No. 16/2000 provides concessional rate of duty in respect of unwrought nickel if imported for use in the manufacture of steel subject to the condition that they follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods), Rules, 1996; that they had applied for registration under the said Rules and the Deputy Commissioner issued them the registration certificate dated 21.3.2002 wherein, against the columns, nature and description of imported goods, unwrought nickel and stainless steel scrap are mentioned and against, columns relating to nature and description of excisable

goods manufactured from the imported goods, ferro alloys, namely, ferro nickel, S.S. ingots are mentioned; that they had also executed a bond, as required under the said Rules; that they had imported unwrought nickel at concessional rate and utilised the same in the manufacture of ferro nickel which is evident from the end-use certificate dated 21.7.2000 given by the Deputy Commissioner. He, further, mentioned that, subsequently, the show cause notice dated 18.4.2001 was issued to them which resulted in the Adjudication Order No. 88/2002 dated 25.9.02 by which the Additional Commissioner demanded the differential duty and imposed penalty under the Customs Act on the ground that imported unwrought nickel has not been used by them in the manufacture of steel, but in the manufacture of ferro alloys; that the Commissioner (Appeals) also, under the impugned order, has rejected their appeal holding that the concessional assessment was available for import of unwrought nickel for manufacture of steel and by any stretch of imagination, the product manufactured by the appellants, i.e. ferro nickel, cannot be considered as steel.

3. The learned Advocate submitted that once the Department has issued the registration certificate under the Customs Rules, 1996 and they have executed the bond and, moreover, the Department has issued the end-use certificate to them, it is not open to the Department now to issue the show cause notice for demanding the differential duty; that the Department is estopped from turning around the holding that manufacture of ferro nickel was not the intended purpose. He was relied upon the judgment of the Supreme Court in the case of C.C.E v. Cotspun Ltd., 2000 (69) ECC 451 (SC) : 1999 (113) ELT 353 (SC) wherein it has been held that the levy of excise duty on the basis of approved classification list, is the correct levy, at least until such time as to the correctness of the approval is questioned by the issuance of a show cause notice; that it is only when the correctness of the approval is challenged that an approved classification list ceases to be such.

The learned Advocate contended that in their case, on their application, as the Department has granted them registration certificate and they have fulfilled all the conditions specified in Customs Rules, 1996, the duty cannot be demanded till the time the registration is cancelled. He also submitted that assuming, though without

conceding, that the ferro-nickel is not steel, it is evident from the certificates produced by them from their customers that ferro nickel, manufactured by them out of the unwrought nickel, has been used in the manufacture of steel; that in other words, the imported nickel has been utilised ultimately in the manufacture of steel and, thus, usage stipulated in Notification No. 16/2000-Cus stands satisfied. He emphasised that usage of nickel in the manufacture of steel is only through the intermediate product ferro-nickel and not directly; that if the benefit of the Notification would be available only to that manufacturer, who manufactures both ferro-nickel and steel and not to a manufacturer who manufactures either steel or nickel, the Notification will not be workable. Finally, he submitted that the show cause notice is beyond the time limit of six months specified in Section 28(1) of the Customs Act and as such entire duty is time-barred; that they had not suppressed any fact from the Department and accordingly, the extended period of limitation is not applicable. He has relied upon the decision in the case of Northern Plastics Ltd. v. Collector of Customs & Central Excise, 1998 (62) ECC 2 (SC) : 1998 (101) ELT 549 (SC), wherein it has been held that "the Collector and CEGAT were, therefore, clearly in error in holding that by claiming the benefit of exemption under Notifications which really did not apply to the imported goods, the appellants had intentionally tried to evade proper payment of Customs duty." 4. Countering the arguments, Shri Virag Gupta, learned DR, submitted that the benefit of Notification No. 16/2000 (Serial No. 169) was available to the importer only if they import unwrought nickel for use in the manufacture of steel; that Rule 4 of the Customs Rules, 1996 also makes it very clear that the goods have to be manufactured in the importer's factory; that, admittedly, the appellants have not used the imported unwrought nickel in the manufacture of steel, which is evident from para 7 of the Memorandum of Appeal filed by the appellants wherein it is mentioned that on utilisation of the imported nickel in the manufacture of ferro nickel, the said ferro nickel was cleared on payment of appropriate duty of excise to either manufacturer of steel or to dealers, who in turn, sold the ferro nickel to manufacturers of steel. He, therefore, contended that in view of these facts, it is apparent that the appellants have not used the imported goods in the manufacture of steel subject to which the concessional rate of duty was available and, therefore, they are liable to pay differential duty.

Regarding time limit, the learned DR submitted that the appellants had executed a bond and as such the duty cannot be demanded from them at any time without the applicability of time limit, mentioned in Section 28 (1) of the Customs Act. Reliance has been placed on the decision in the case of Commissioner of Customs, New Delhi v. C.T. Scan Research Centre (P) Ltd., 2003 (88) ECC 23 (SC): 2003 (57) RLT 1 (SC), wherein it has been held that the demand of duty raised even after five years for contravention of post-importation conditions of the Notification, is not time-barred as provisions of Section 28 (1) do not apply because it is not a case of non-levy, short levy or erroneous refund.

5. We have considered the submissions of both the sides. Serial No. 169 of the Notification No. 16/2000 provides concessional rate of duty on unwrought nickel for use in the manufacture of steel subject to following the procedure set out in the Customs Rules, 1996. It is not in dispute that the imported unwrought nickel was used in the manufacture of ferro nickel only by the appellants. Nothing has been brought on record by the appellants to show that ferro nickel can be regarded as steel. On the other hand, as pointed out by the learned DR, they have sold ferro nickel to the manufactures of steel, who, according to the appellants, have used the ferro nickel in the manufacture of steel in their factory. We also find force in the submissions of the learned DR that the imported material has to be used in the factory of the importer himself and subsequent use of the product by their customers will not satisfy the condition of use stipulated in the Notification, which is very much evident from Rs. 4 of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996, which provides that "A manufacturer, who has obtained a certificate, referred to in sub-rule (3) of Rule 3 and intends to import any goods for use in his factory at concessional rate of duty, shall make the application to this effect to the Assistant Commissioner.....indicating the estimated quantity and value of such goods to be imported, particulars of the Notifications applicable on such import and the Port of import". As the appellants have not used the imported material in the manufacture of steel, the benefit of Notification was not available to them. The decision in the case of Cotspun Ltd. is not applicable as the facts are completely different. We, however, agree with the learned Advocate that the extended period of limitation is not applicable as no material fact has been suppressed by the appellants from the

Department with an intent to evade payment of duty. From the Registration Certificate and from the bond executed by them, it is very much clear that they had imported unwrought nickel for manufacture of ferro nickel. It is specifically mentioned in the bond executed by the appellants that the Deputy Commissioner has given them permission to obtain the unwrought nickel (raw-material) for use in his factory for the use in the manufacture of ferro alloys covered under Tariff Heading No. 72.02 in terms of the Notification No. 16/2000-Cus dated 1.3.2000 (Item 169). We also observe that the Deputy Commissioner has, subsequently, issued the end-use certificate dated 21.7.2000 also wherein it is mentioned as under: "Examined the relevant documents. Register and evidence in respect of import and utilisation of above-mentioned goods in the manufacture of the end-product as undertaken in the bond by the importer and found that the entire quantity of the material described above, has been fully utilized." 6. In view of such a certificate given by the Department, it is not open to the Revenue to claim that the appellants either have suppressed any fact or misdeclared any fact with intent to evade payment of duty.

The Supreme Court in the case of Northern Plastics Ltd. (supra), relied upon by the learned Advocate, has held that "as the appellants had given full and correct particulars as regards the size of the goods, it is difficult to believe that it has referred to the wrong exemption Notification with (sic) any intention to evade proper payment of CVD."The decision in the case of C.T. Scan Research Centre is not applicable in the present matter in view of the fact that the Department has given them a certificate to the effect that the inputs had been fully utilised in the manufacture of the end-product as undertaken in the bond. Thus, the post-importation condition has also been treated to have been fulfilled by the proper authority. Even if six months time limit is computed from the date of end-use certificate, which is dated 21.7.2001, the show cause notice issued on 18.4.01, is beyond the normal time limit of six months specified in Section 28 of the Customs Act. In view of this, the entire demand is hit by the time limit specified in Section 28 of the Customs Act.

7. We, therefore, set aside the demand of Customs duty and consequential penalty imposed on the appellants.

8. The learned Advocate also mentioned that Central Excise duty has also been confirmed against them on account of shortage of raw-material found by the Central Excise officers during their visit to their factory premises; That the weighment of the raw-material was not done physically and shortage alleged to have been found has been arrived at on eye estimation. He, therefore, contended that on such basis, excise duty cannot be demanded from them. The Adjudicating Authority has given a finding that Shri Sukhbir Kumar Jain, proprietor has admitted in his statement, written in his own hand-writing, the shortage of raw-material and the retraction has been made only after almost 20 days of making the statement. The Commissioner (Appeals) has also given a finding that during the visit, the Central Excise officers had made a weighment charge which was duly signed by the appellants and the appellants had admitted the shortage in their statement dated 22.8.2000. We do not find any reason to disagree with the findings of both the lower authorities in this regard. It is not denied by the learned Advocate that the retraction was given on 12.9.2000 which cannot be called an immediate retraction. Further, a perusal of the said letter reveals that nothing has been specifically mentioned about the shortage of raw-material. In view of this, we uphold the demand of Central Excise duty and penalty on this Count. The appeal is disposed of in the above terms. indicated above.

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