

India Fabricators Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Dec-03-2004

Reported in : (2005)(120)LC203Tri(Chennai)

Judge : R K Jeet

Appellant : India Fabricators

Respondent : Cce

Judgement :

1. This appeal filed by India Fabricators, the appellant herein is directed against the order in Appeal No. 13/2003-Try-II (SCN) dated 30.1.2003 passed by the Commissioner of Central Excise (Appeals-II) whereby the Commissioner has rejected the appeal with minor modification in regard to quantum of penalty. The duty demanded by the original authority was Rs. 31,294/-.

2. Brief facts of the case are that the appellant was engaged in the manufacture of Floor Grills and Peg Fins falling under heading 7326.90, "Step thread" falling under heading 7308.90 and "Waste scrap" falling under heading 7204.7204.90 and avail the benefit of Exemption Notification No. 175/1986-CE dated 1.3.1986 as amended. While availing so, the appellant also took inputs credit of duty on the input received by them and utilised the same against payment of final products cleared.

2.1 Appellant also undertook job work on the raw materials supplied by various suppliers in terms of Notification No. 214/86-CE dated 25.3.1986. Show cause notice dated 13.5.1997 was issued to the appellant alleging that the appellant has manufactured and cleared FBC Boiler parts falling under Heading No. 8402 without determining the correct central excise duty leviable and also cleared the said goods without payment of Central Excise duty and thus the appellant contravened various provisions of the Central Excise Rules and the Show cause notice culminated in the order of adjudication passed by the original authority whereby he has demanded a duty of Rs. 31,294/-(Rupees Thirty one thousand, two hundred and ninety four) being the total duty payable in respect of the job work done on the raw materials supplied by M/s. Cethar Vessels Ltd. and others. He has also imposed mandatory penalty equal to the duty demanded in terms of Section 11AC and Rule 173Q of the CE Rules, 1944 and also ordered for recovery of interest on the duty amount. On appeal, the Commissioner (Appeals), rejected the appeal except for reducing the penalty to Rs. 10,000/-(Rupees Ten thousand). It is against this order of the Commissioner (Appeals), that the present appeal has been filed.

3. Shri Vijaykumar, earned Counsel for the appellants submitted that the appellants undertook the job work for the suppliers of the raw material who are the manufacturers of the final product in terms of the provisions of Notification No. 214/1986 dated 25.3.1986 and the appellants have not contravened any provisions of the said Notification. Hence duty, if any, payable, should have been demanded from the manufacturers of the final products and not from the job worker. He, therefore, prayed for allowing the appeal.

5. I have carefully considered the submissions made and gone through the case records. The allegation in the show cause notice is that the appellant has manufactured and cleared FBC Boiler parts falling under heading 8402 in contravention of the Central Excise Rules. On going through the Annexure II to the show cause notice, it is seen that that the appellant received raw materials valued at Rs. 3,98,911.00 from suppliers and on which they have done job work. These raw material were processed by the appellant and after processing, the processed goods were returned to the suppliers in terms of Notification No. 214/1986-CE

dated 25.3.1986. I observe from the impugned order that the lower appellate authority has recorded a finding that the suppliers of the raw materials has not followed the procedure envisaged in clause (2) of the Notification No. 214/1986. His finding further went on to say that the said notification expressly provides that the exemption contained in the Notification would be applicable only if the provisions contained in clause (2) are complied with and in the present case, the said essential requirement has not been complied with and therefore, the assessee cannot enjoy the benefit of the said Notification. It is, therefore, necessary to appreciate clause (2) of the said Notification which for convenience of reference is reproduced below: 2. The exemption contained in this Notification shall be applicable only to the said goods in respect of which, (i) the supplier of the raw materials or semi-finished goods avail of the credit of duty paid on inputs under Rule 57A, and gives an undertaking to the Assistant Collector of Central Excise having jurisdiction over the factory of the job worker that the goods will be used in or in relation to the manufacture of the final products.

(ii) the said supplier produces evidence that the goods have been so used; and (iii) the said supplier undertakes the responsibility of discharging the liabilities in respect of Central Excise duty leviable on the finished products.

6. It is clear from the above that the responsibility of furnishing undertaking etc. in terms of the Notification is cast on the supplier of the goods and not on the job worker. In the present case, it is an admitted position by the Revenue itself that the raw materials were supplied to the appellant by various suppliers and on which the appellant has done job work and returned the processed goods to the suppliers of the raw materials. In the circumstances, what prevented the departmental authorities to call for further details, if required, from the suppliers of the raw-materials in terms of Clause (2) of the Notification is not understandable, before asking the job worker to pay duty on the job work done, when in fact the job worker is not required to furnish any undertaking whatsoever in terms of the Notification in question. Therefore, the question of denying the benefit of the Notification to the appellant who is a job worker, for the contravention, if any, committed by the supplier of the raw materials does not arise and consequently the benefit of Notification No.214/1986 cannot be denied to the appellant herein.

7. I further observe that though there was no allegation in the show cause notice regarding availment of simultaneous benefit i.e., exemption contained in Notification No. 175/1986 and benefit of Modvat credit, both the authorities below have proceeded to record a finding on this aspect, which in my view, was uncalled for inasmuch as there was no such allegation in the show cause notice. They have, therefore, traversed beyond the scope of the show cause notice in so far as the alleged availment of simultaneous benefits in terms of Notification No.175/1986 is concerned. Even otherwise, SSI exemption under Notification No. 175/1986 and Modvat Credit can be availed simultaneously by a manufacturer, but on different goods, in terms of the ruling rendered by the Tribunal in the case of Chandrapur Board Mills v. CCE, Delhi , CCE, Meerut v. Nova Vision ElectronicsSwaraj Paint Industries v. Collector decision was challenged by the Revenue before the Hon'ble Apex Court and the Apex court dismissed the Civil Appeal No. 7955/1995 filed by the Commissioner on 2.1.1996. In the present case, the goods admittedly fall under different headings. Therefore, on this score also, there cannot be any charge against the appellant.

8. In view of my discussion and finding above, I hold that the impugned order is not legal and proper and I set aside the same and allow the appeal with consequential relief, if any. Ordered accordingly.

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