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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-10-2004

Reported in : (2005)(100)ECC355

Judge : A Wadhwa, S T S.S.

Appellant : Asian Electronics Ltd.

Respondent : The Commissioner of Central

Judgement :

1. The appellants are engaged in metallising Polyester Polypropylene film with silver, which in turn are used in the manufacture of the capacitor, cleared silver waste during the period October 97 to November 97 and February 98 to June 98 without payment of duty. They were served show cause notices on the ground that such silver waste and scrap cleared by them was properly classifiable under heading 7101.80 of CETA, 1985 attracting Central Excise duty. The appellants during the course of adjudication contended that the said silver scraps were nothing but pure silver classifiable under heading 7101.60 attracting nil rate of duty. The original adjudicating authority accepted the above stand of the appellants and dropped the proceedings against them.

2. On the review application filed by the Revenue the Commissioner (Appeals) reversed the said order and held that the silver waste and scrap is properly classifiable under heading 7101.80 and was required to be cleared on payment of duty. Hence, the present appeal.

3. We have heard Shri S.R. Patanakar, Ld. Consultant appearing for the appellant and Shri Vimlesh Kumar, Ld. SDR appearing for the revenue.

4. The appellant's stand, as placed before the Commissioner (Appeals) in the shape of counter reply was as under : "The respondent stated that they are purchasing Silver wire of 99% purity which is used for metallising Polyester Polypropylene film, which in turn is used in the manufacture of the capacitor. During the process of metallising silver wire is heated at a temperature at which vapour of silver is formed in the vacuum chamber. This vapour gets deposited on the film. Since the film is narrow in width some amount of silver vapour gets deposited in the chamber, which is nothing but silver of 99% purity. This silver is removed from the chamber and the same is again sent to the job worker for converting the same again into silver wire, which is again re-used for metallising the film. From the facts stated above, it is clear that what gets deposited in the chamber and collected from chamber is silver and not waste of silver as alleged in the review order of the Commissioner Central Excise Aurangabad. It is a fact that inadvertently the respondents have given the description of goods in the challan as Silver Waste but in reality it is not a waste but is is silver which got deposited in the chamber during the process of metallising of the film. In the normal trade parlance, waste of scrap means which get generated during the process of manufacture and has hardly any value as compared to the value of prime material and sold as bhangar. Further, it is nothing but remnants which remains after the prime material is used in the manufacturing process. In the instant case what gets deposited in the vacuum chamber is silver in the form of vapour which is nothing but pure silver in the form of powder/flakes. Hence the same cannot be compared with the waste and scrap of silver. Excise and Customs Aurangabad is incorrect and not legally tenable.

Without prejudice to what has been stated in para (1) above, respondents further submit that in order to support their contention of the effect that what has been sent to the job worker is silver and not the waste and scrap of silver as contented by the department.

Respondents are submitting herewith a copy of the recovery report dated 06/07/98 received from M/s. National Refinery (P) Ltd. Mumbai. (job worker) in respect of each lot sent to them careful reading of this report would reveal that the respondents have sent 13.10 KGs of Silver Powder recovered from their vacuum chamber which is 13.105 Kgs as per precision bullion balance. This report further reveals that there is a melting loss of the tune of 102.200 grms and purity loss to the tune of 94.900 grms and the fine silver wire and returned is 12.907 Kgs of silver has been made by the job worker and returned to the respondents.

This also establishes that there is a recovery to the extent of 98.4% and the melting and purity loss is only 1.6%. This clearly establishes that hat is sent to the job worker is silver and not the waste and scrap of silver as contended by the Department. On this ground also observation of the Commissioner, Central Excise and Customs, Aurangabad is incorrect and not legally tenable.

5. The above stand of the appellants has not been accepted by the appellate authority by observing as under : "I have carefully gone through the case and I find that they are manufacturing metallised film and metallised film is used in the manufacture of the final product i.e. capacitors. During the process the silver wire is heated and converted into vapor form and deposited on the film. The silver powder in the form of vapour accumulated into chamber which are not 99% pure. The Asst.

Commissioner has analyzed such accumulated silver powder as pure silver under chapter heading 7106.60 without any testing report from relevant authority. Which is not acceptable when there is specific Entry in the Central Excise Tariff i.e. 7101.80 for waste and scrap of precious metal i.e. "Waste and Scrap of precious metal or of metal clad with precious metal - other waste and scrap containing precious metal or precious metal compounds of a kind used principally for recovery of precious metal".

I find that silver is precious metal and waste and scrap in the form of vapour powder is covered under the chapter sub-heading No. 7101.80 and attracting appropriate rate of duty. The case law cited by the respondent and subsequently Asst. Commissioner has dropped the demands on the same grounds is not relevant to present appeal. Whereas in the case law in the case of OEN Ltd. v. CCE, Cochin remnant of silver strips resulted after punching hole in strip hence, the question of purity not raised. But whereas in the instant case silver waste is melted and converted into vapor form and deposited in film. The some portion of silver vapor is accumulated in the chamber which cannot be considered as 99% pure waste.

I have found from the grounds of counter reply wherein they have stated that they have recovered 12.907 Kgs from 13.100 Ks which-comes to percentage wise 98.4% recovered from the powder. This ratio clearly shows that the waste powder accumulated in the chamber is not pure silver powder. I have also seen from reports of M/s. National Refinery Pvt. Ltd., submitted by the respondent which are as under :Ref. No. & Date Material sent Melting/Purity Material loss recoveredA-223/SC-0242 17.730 Kgs .576 Kgs 17.154 Kgsdated 20/03/98A-223/SC-0250 15.407 Kgs .541 Kgs 14.866 Kgsdated 25/04/98A-223/SC-0257 12.805 Kgs .288 Kgs 12.517 Kgsdated 13/06/98A-223/SC-0261 13.105 Kgs .197 Kgs.

12.908 Kgsdated 06/07/98 dated 06/07/98The above chart shows that the silver waste accumulated during the manufacturing activities in the chambers are not pure. The contention of the respondent stating vapour deposited in the chamber having 99% purity is not acceptable. The value of scrap of precious metal hardly reduced hence, the contention of the respondent that scrap has hardly value and sold to as Bhangar is not acceptable. The argument made by the respondent in respect of prima value taken into consideration for demanding duty on silver waste is not made with the supporting documents. I find that the remnant is in the form of silver powder waste, which is classifiable under chapter sub heading 7101.80 and attracting duty at appropriate rate".

6. The appellants have re-iterated the same pleas before us. They have also made references to the Tribunal's decision in the case of M/s. OEN (I) Ltd. v. Collector of Central Excise, Cochin 1997 (94) ELT 268 (Tri.) wherein it was held that remnants of silver strips after punching holes in them retain same purity and are not scrap classifiable under sub-heading 7101.80 of the Central Excise Tariff Act, 1985. However, we find that the ratio of the said decision is not applicable inasmuch as

the goods were admittedly silver strips, which has not lost their originality. In the present case, the silver wire which is heated at high temperature is vapourized and some vapours gets deposited in the chamber. The said deposits of silver in the chamber are being removed and cleared by the appellants for the purpose of recovery of the metal from the same. It cannot be said that the said silver vapour settled on the walls of the chamber is not in the nature of waste and scrap. The appellant's contention is that the waste is that which does not carry value, does not appeal to us inasmuch as its is waste of the precious metal and is bound to carry high value. The goods in question are not longer useable in the same manner in which the original silver was used and they have to be sent to their job workers for recovery of the metal out of the same. They are no longer fit for the original use in the said shape. It the appellant's contention is accepted, then the sweeping, dust or the powder of gold scattered around during the course of mechanical working on the same would also not be liable to be considered as waste and scrap inasmuch as the same would also be of some purity. HSN Notes clearly explain the scope of waste and scrap to the residues of electrolytic process. As such, we are of the firm view that the silver vapour which gets settled on the alls of the chamber during the course of metalising and subsequently removed and cleared, as such an sent to job workers for recovery of the metal and for conversion into silver scrap is nothing but waste and scrap classifiable under heading 7101.80 an attracting duty. No infirmity is found in the view taken by the Commissioner (Appeals). Accordingly, we reject the appeal.