D.N. Steel Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-29-2004

Reported in : (2005)(98)ECC729

Judge : S Kang, Vice, A T V.K.

Appellant : D.N. Steel

Respondent : Cce

Judgement :

1. When the case was called none appeared on behalf of the appellants.

Hear learned SDR.2. In this case the benefit of Notification No. 202/88-CE dated 20.5.1988 was denied to the appellants in respect of the final product on the ground that input used in the manufacture of final product are clearly recognizable as non-duty payable.

3. The contention of the appellants in the present appeal is that as per the Explanation to the Notification No. 202/88-CE dated 20.5.88, all stocks of input in the Country except such stocks as are clearly recognizable as being non-duty paid shall be deemed to be input on which duty has been paid. The appellant's purchased the scrap of old and used rails and other scrap from the market an used in the manufacture of final product. The contention of the Revenue is that the scrap used in the manufacture of the final product is clearly recognizable as non-duty paid. The Revenue relied upon the decision of the Hon'ble Supreme Court in

the case of Elphinstone Metal Rolling Mills v. Collector of Central Excise, Bombay, 4. In this case the admitted facts of the case are that appellants purchasing old and used rails on auction from the Railway and also purchasing scrap from the market and the same is used for the manufacture of the final product. The appellants were availing the benefit of Notification No. 202/88-CE dated 20.5.88. The condition of the notification is that the finished goods are to be manufactured out of duty paid-inputs.Elphinstone Metal Rolling Mills v. Collector of Central Excise, Bombay (Supra) held that waste and scrap purchased from the open market couldn't be considered as duty paid. The Hon'ble Supreme Court held as under: "We think the view taken by the Tribunal cannot be considered to be as inappropriate. Unless the scrap and waste are goods that had been used can be demonstrated to have been a duty paid goods, it cannot be assumed that they are so, particularly when it cannot be said with certainty that all scrap and waste material used has been subject to excise duty earlier. The waste and scrap was dutiable only when it was manufactured product and was otherwise excisable under the provision of the Act, All waste and scrap is neither a manufactured product nor is excisable and on this basis held that the appellant is not entitled to the benefit of the relevant Notification." 6. In view of the above decision of the Hon'ble Supreme Court, we find no merit in the appeal and the same is dismissed.