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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-21-2005

Reported in : (2005)(183)ELT210TriDel

Judge : A T V.K., P Bajaj

Appellant : Northern Railways Mechanical

Respondent : C.C.E.

Judgement :

1. In this appeal, filed by M/s. Northern Railways Mechanical Works, the issue relates to the demand of duty on waste and scrap of iron & steels as during the period no exemption notification was in force.

2. Mrs. Suvira Lal, learned Advocate, submitted that the mechanical workshop manufacture railway wagons for use of the Indian Railway; that wagons are exempt from payment of Central Excise duty; that during the course of manufacture of railway wagons, ferrous waste and scrap falling under Heading 72.04 of the Schedule to the Central Excise Tariff emerges which is being sent by them to the Controller of Stores, Northern Railways for sale through auction; that the duty has been demanded from them for the period from 1-3-1994 to 15-3-1995 under the impugned Order on the ground that the Notification No. 171/1988-C.E., dated 30-5-1988 which has exempted ferrous waste and scrap was rescinded by the Central Government by Notification No. 64/94-C.E., dated 1-3-1994. The learned Advocate, further, submitted that subsequently exemption from payment

of duty was allowed to them by Notification No. 23/95-C.E., dated 16-3-1995: that as the ferrous waste and scrap was exempted earlier to March, 1994 and also w.e.f. March, 1995 the department should not have demanded the duty from them; that in any case the materials out of which waste and scrap has been generated are duty paid, and therefore, duty cannot be demanded again on the scrap; that they were under the bonafide belief that scrap generated in a workshop of railway department is exempted from payment of duty, and therefore, the question of imposing any penalty does not arise. We also heard Shri O. P. Arora, learned SDR.3. Ferrous waste and scrap is chargeable to duty under Heading 72.04 of the Central Excise Tariff. As per Note 8(a) of Section XVI of the Central Excise Tariff Metal waste and scrap means, waste and scrap from the manufacture or mechanical working of the metals, and metal goods definitely not useable as such because of breakage, cutting up, wear or other reasons. In the present matter it is not in dispute that the waste and scrap is generated during the manufacture of railway wagon.

Thus the scrap satisfies the definition given in Note 8(a) to Section XVI as it is generated during the process of manufacture and it is liable to Central Excise duty irrespective of the fact that it has been generated out of duty paid material. Central Excise duty is payable as per the rate of duty mentioned in the Schedule to the Central Excise Tariff Act in terms of Section 3 of the Central Excise Tariff Act. It is not in dispute that during the relevant period no exemption exempting waste and scrap was in existence inasmuch as Notification No.171/1988-C.E., dated 13-5-1988 which used to exempt ferrous waste and scrap had been rescinded by Notification No. 64/1994, dated 1-3-1994.

After the notification No. 171/1988 was rescinded the Central Excise duty became payable on ferrous waste and scrap. The exemption was again granted by Notification No. 23/1995 dated 16-3-1995. In view of this the duty amount confirmed against the Appellants is upheld. We, however, agree with the learned Advocate that no penalty is imposable on the Appellants as they were under the bonafide belief that they being department of Central Government are not liable to pay Central Excise duty. We, therefore, set aside the penalty imposed on them.

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