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Commissioner of Central Excise Vs. Cable Corporation of India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-23-2005

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Cable Corporation of India Ltd.

Judgement :

1. Revenue is aggrieved by the order of Commissioner of Central Excise (Appeals) who held that the demand is time barred.

2. The respondent manufactures cables. He removed goods said to be aluminium wire rods, without payment of duty, under Rule 57(3) of the Central Excise Rules to another person for conversion into aluminium ingots and return. The Department contended that the goods cleared by the respondent fell in the category of scrap and therefore should have been cleared on payment of duty under Rule 57F(5) whereas the respondent cleared the same without payment of duty. The Additional Commissioner who adjudicated the case confirmed the demand raised under proviso to Section 11(A) invoking larger period of limitation. The period of dispute is 11.11.1994 to 30.3.1995. Show cause notice was issued on 18.5.1996.

3. The Revenue contends that the respondent cleared scrap of aluminium by describing it as remnants of aluminium rods classifiable under sub-heading 7601.30 of CETA whereas the goods should have been correctly declared as

scrap and should have been cleared under Rule 57F(5) on payment of duty. This amounted to suppression (clearing goods under a wrong description). The respondent pleaded before the Commissioner that he correctly described the goods as remnants of aluminium rods as they emerged as rods only during the process of manufacturing aluminium cables/wires. The Commissioner did not accept the contention and held that the goods cleared without payment of duty are in the nature of scrap. The Commissioner however held that there is no suppression on the part of the assessee inasmuch as the goods were cleared under Rule 57F(3) under cover of a challan. All clearances were effected after filing declaration on 28.12.1994 and was continued upto 30.3.1995; that there was no suppression on the part of the assessee.

5. The Commissioner allowed the appeal before him holding that the demand is time barred. The Revenue relies upon the decision of the Tribunal in Nizam Sugar Factory v. CCE exactly stating how and why. It is clear from the records that the show cause notice was issued invoking larger period of limitation merely alleging that the respondent misdeclared the goods. The respondent contends that he declared the goods as remnants of aluminium rods because they were indeed remnants arising out of the process of manufacture. We agree with the Commissioner's contention that there was no suppression of facts on the part of the respondent. In any case the whole exercise would have been revenue neutral had he paid duty on the goods, this is because the respondent is receiving back the goods after processing from the job worker.

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