

Commissioner of Central Excise Vs. Indore Rolling Mills Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-24-2006

Judge : S Kang, Vice-, M T K.C.

Appellant : Commissioner of Central Excise

Respondent : indore Rolling Mills Ltd.

Judgement :

1. The respondents are manufacturers of hot re-rolled products of non-alloys steel and had opted for payment of duty under Rule 96ZP(3) on capacity of production determined under the Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997. Originally, the levy was proposed to be implemented from 1-8-97 but later on the effective date was shifted to 1-9-97. Due to this change, there was confusion about the duty rate applicable in case of goods manufactured and cleared during the month of August, 1997. Earlier Notification No.50/97 dated 1-8-97 was issued partially exempting the goods manufactured or produced prior to first day of August, 1997 and cleared on or after that date from an induction furnace unit or as the case may be, a hot re-rolling mill, but this notification was amended by Notification No. 57/97, dated 30-8-97 and the date 1-8-97 was substituted by a date 1-9-1997. Thus there was no exemption on products produced and cleared in August, 1997. Accordingly, a show cause notice was issued to the respondents demanding duty at the rate of 15% ad valorem on the goods manufactured and cleared during August, 1997.

However, Notification No. 4/2000-C.E. (N.T.) dated 31-1-2000 was issued under Section 11C for no charging the duty in excess of Rs. 300/- PMT on the goods manufactured during the month of August, 1997.

Accordingly, duty of Rs. 26,196/- was confirmed by the adjudicating authority and penalty of Rs. 5,000/- was imposed on the respondents.

The Commissioner (Appeals) however, set aside the order of the adjudicating authority on the ground that duty liability in respect of the products is to be discharged by the appellants at prescribed effective rate i.e. 15% ad valorem, but for the goods manufactured in hot rolling mill in which nominal diameter does not exceed 160 mm manufactured during August, 1997, the effective rate of duty in terms of Notification No. 50/97 as amended by Notification No. 57/97 remained at the level of Rs. 150/- PMT. Notification No. 4/2000 was issued under Section 11C which caters to an altogether different situation. It cannot be for an introduction of a different rate of duty prescribed by notification issued under Section 5A of the Act. There is no allegation in the show cause notice that products manufactured by the appellants (present respondents) were manufactured by a mill with nominal diameter exceeding 160 mm. There would be no change in the rate of duty prescribed under S. No. 3 of Notification 50/97.

2. It was argued by the revenue that Notification No. 50/97 dated 1-8-97 as amended by Notification No. 57/97, dated 30-8-97 does not state about the rate of duty applicable on the goods being manufactured by the respondents prior to 1-9-97 but cleared during August, 1997. The tariff rate of 15% ad valorem is applicable on goods manufactured and cleared during August, 1997. Therefore, the Government issued Notification No. 4/2000-C.E. (N.T.) dated 31-1-2000 considering the prevalent practice of not charging the duty in excess of Rs. 300/- PMT. The Commissioner (Appeals) has erred in mentioning applicability of rate of duty as mentioned at S. No. 3 of Notification No. 50/97.

However, this Notification No. 50/97 as amended is not applicable for the goods manufactured before 1-9-97.

3. None appeared for the respondents in spite of notice nor any request for adjournment was received. Therefore, the appeal is being disposed of on the basis of evidence on record. No Cross objection has also been filed by the respondents.

4. We find that Notification No. 50/97-C.E., dated 1-8-97 was amended by Notification No. 57/97-C.E., dated 30-8-97 prescribing the rate of duty effective from the first day of September, 1997. Therefore, for the goods manufactured in August, 1997 only the tariff rate i.e. 15% of ad valorem is applicable. Since there was confusion about the rate of duty as originally levy of duty on the basis of capacity of production was being introduced from 1-8-97 but subsequently it was changed to 1-9-97, the assessee has started paying the duty at the rate of 150 PMT as mentioned in Notification No. 50/97. Since the date of applicability of this duty with modification was shifted to 1-9-97, the applicable rate of duty would be as prescribed under the tariff for goods produced in August, 1997. Therefore, to keep the uniformity in the duty payable by the assessee, Notification under Section 11C was issued for charging the duty @ Rs. 300/- PMT for the goods manufactured in August, 1997 and cleared in August, 1997 as was the practice prevalent during August, 1997. Therefore, the adjudicating authority has correctly demanded the duty from the appellant at the rate of Rs. 300/- PMT for the goods produced during August, 1997. The Commissioner (Appeals) wrongly applied the rates prescribed under Notification No. 50/97, dated 1-8-97, as it was modified by Notification No. 57/97 and the rates were made effective to goods manufactured from 1-9-97. Therefore, the appeal of revenue is allowed and the order of the Commissioner (Appeals) is set aside. The order of original authority is confirmed with a modification that in the circumstances of case, there is no need for imposition of penalty. Accordingly, penalty imposed by original authority is set aside. Ordered accordingly.