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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-12-2006

Reported in : (2006)(108)ECC626

Judge : M Ravindran

Appellant : Bedi Spining Ltd.

Respondent : Cc

Judgement :

1. This appeal is directed against Order-in-Appeal dated 28.2.2005 which upheld the Order-in-Original as regards confiscation of scrap, reducing the penalty on the appellants.
2. The issue which arises for consideration is whether the scrap generated when the Barges which were purchased by the appellants were repaired at a place which is notified in the Customs area and the scrap generated thereon cleared, will be liable for confiscation.
3. Learned Advocate for the appellants submits that the appellants bought in 4 Barges and got them repaired at Sikka. After repairs said Barges were plying in the Indian water. It is the submission that the show cause notice seeks to confiscate the scrap which got generated during the repair of the said Barges on Indian shore. It is submitted that the show cause notice initially alleges the denial of benefit of Notification No. 21/2002 for the Barges but later on it goes on to

confiscate the goods i.e. 40 M.T. of scrap which got generated when the Barges were repaired. It is the submission that once it is admitted that benefit of Notification No. 21/2002-Cus is applicable to him then the confiscation of the goods i.e. waste and scrap generated during the process of repair cannot be confiscated as it was which was generated during the repair of Barges in Indian shores. If the Barges were availing the benefit of notification No. 21/2002-Cus they are liable to pay duty on such Barges, if they are not bought in for ship breaking purposes. Since the Barges are availing the benefit of notification No.21-2002-Cus, generated by repairing the said Barges would fall under the category of imported goods as defined under Sub-section (25) of Section 2 of the Customs Act, 1962. Since the duty has not been discharged on such waste and scrap the said waste and scrap are liable for confiscation. I find that the redemption fine of Rs. 90,000/- on the appellants seems to be on the higher side. Therefore, I reduce the same to Rs. 50,000/-. As regards penalty imposed on the appellants the Commissioner (Appeals) has come to the conclusion that there is no requirement of conscious knowledge for imposition of penalty under Section 112(a) of the Customs Act, and he has reduced the penalty to Rs. 25,000/-. I find not the issue before the adjudicating authority nor before the Commissioner (Appeals).

4. Learned D.R. on the other hand submits that the show cause notice proposed to confiscate the Barges, and on the other hand it is very clear that 40 M.T. waste and scrap which was generated by repairing the said Barges is only sought to be confiscated and penalty imposed. It is his submission that once the Barges are repaired in Indian shore, any material that, comes out of such repair is liable for confiscation as the duty is liable to be paid on these goods.

5. Considered the submissions made by both sides and perused the records. I find from the show cause notice that, it is issued for confiscation of 40MT scrap valued at Rs. 3,50,000/- under the provisions of Section 111(a), (h), (i), (j), (o) of the Customs Act, 1962. From the show cause notice I find that the whole case has been made out against the appellants in respect of waste and scrap of iron and steel from the records that the issue involved in this case is regarding interpretation of Notification No. 21/2002-Cus and whether scrap which was generated during repair of Barges would amount to import of goods. Since the

question involved in this case is regarding interpretation of notification the penalty imposed on the appellants appears to be on higher side, I reduce the same to Rs. 15,000/-. In view of the above facts and circumstances the order-in-appeal is set aside partly appeal is allowed partly. As indicated in above paragraphs.

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