

Ferro Metals Vs. Cce

Ferro Metals Vs. Cce

SooperKanoon Citation : sooperkanoon.com/43025

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-03-2006

Reported in : (2006)(111)ECC188

Judge : M Ravindran

Appellant : Ferro Metals

Respondent : Cce

Judgement :

1. These appeals are directed against order in appeals dated 26th February, 2004. Since, the issue involved in both the appeals is common is in respect of the same appellant, both the appeals are taken up and disposed of by a common order.

2. The relevant facts that arise for consideration are the appellant is registered dealer and had issued modvat credit invoices based upon the invoices and the material received from M/s Tara Re-Rolling Mills, Tedesara. Investigation on Tara Re-Rolling Mills divulged that the said re-rolling mill was not able to produce the goods hence waste and scrap could not have arisen in the factory, the whole exercise was done in collusion to pass on ineligible modvat credit. Show cause notice was issued to the appellant on 14/07/2000 for imposition of penalty under Rule 173-Q(1) of the Central Excise Act 1944 read with Rule 226 and 209A. The appellants contested the show cause notice on time bar and also on merit. Adjudicating authority imposed penalty on the appellant, an appeal against the

order also met with the same fate.

3. The learned advocate appearing for the appellants submits that the whole issue is hit by limitation.

It is his submission that the show cause notice was received by the appellant on 14/07/2000 while the modvat invoices which were issued by him were in the month of May, 1995. He also relies upon the decision of the Hon'ble Supreme Court in the case of Amrit Foods v. Commissioner of Central Excise, U.P.⁴. Learned DR submits that though there is delay in issue of show cause notice, but since the show cause notice proposes to impose penalty on the current appellant, there is no limitation for issuing show cause notice to the appellant for imposition of penalty.

5. Considered the submissions made by both sides and perused records. I find from the show cause notice that the appellants were directed to show cause as to why penalty should not be imposed on them under Rule 173-Q(1), 226 and 209A of Central Excise Rule 1944. From the order in Original, I find that the penalty has been imposed on the appellants under Rule 173-Q(1) of the Central Excise Rule 1944. Hon'ble Supreme Court in the case of Amrit Foods (Supra) at paragraph '5' has held as under: The Revenue has preferred an appeal from the order of the Tribunal setting aside the imposition of penalty under Rule 173Q of the Central Excise Rules, 1944. The Tribunal has set aside the order of the Commissioner on the ground that neither the show cause notice nor the order of the Commissioner specified which particular clause of Rule 173Q had been allegedly contravened by the appellant. We are of the view that the finding of the Tribunal is correct. Rule 173Q contains six clauses the contents of which are not same. It was, therefore, necessary for the assessee to be put on notice as to the exact nature of contravention for which the assessee was liable under the provisions of the 173Q. This not having been done the Tribunal's finding cannot be faulted. The appeal is, accordingly, dismissed with no order as to costs.

6. The case of the appellant for setting aside the penalty is squarely covered by the decision of the Hon'ble Supreme Court in the case of Amrit Foods.

7. Accordingly, respectfully following the apex court's decision the impugned order upholding the penalty on appellants is liable to be set aside and I do so. Impugned order is set aside and appeals allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com