Galanda Continuous Casting Ltd. Vs. Assistant Collector, Central Excise, Hyderabad and ors.

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Court : Andhra Pradesh

Decided On : Oct-15-1987

Reported in : 1988(15)ECC128; 1987(32)ELT474(AP)

Judge : A. Lakshmana Rao and ;B.P. Jeevan Reddy, JJ.

Acts : Central Excises Act, 1944; Central Excise Rules - Rule 56A, 56A(1) and 56A(2); Customs Tariff Act, 1975 - Sections 3

Appellant : Galanda Continuous Casting Ltd.

Respondent : Assistant Collector, Central Excise, Hyderabad and ors.

Judgement :

Jeevan Reddy, J.

1. The petitioner , a Public Limited Company, is engaged in manufacturing and selling of aluminium wire rods, aluminium alloy ingots, aluminium circles of different thicknesses, and aluminium strips. These goods are manufactured from aluminium ingots purchased by the petitioner from primary producers, and aluminium scrap purchased from open market.

2. Central Excise duty's leviable on aluminium wire bars under Tariff Item No. 27(a)(ii), while aluminium streips, plates, circles and sheets, and aluminium circles having thickness of above of 0.56 mm. but not above 2.00 mm. fall under Tariff Item No. 27(b) of the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act'). `Aluminium' is mentioned under Tariff Item No. 27.

3. Rule 56A of the Central Excise Rules prescribes a special procedure for movement of duty paid materials or components parts for use in the manufacture of finished excisable goods. Sub - rule (1) of Rule 56A says :

'Notwithstanding anything contained in these Rules, the Central Government may, by notification in the Official Gazette, specify the excisable goods in respect of which the procedure laid down in sub - rule (2) shall apply.'

4. Under this sub - rule, 'aluminium, other than n wire rods manufactured from ingots or billets' has been notified as one of the excisable goods in respect of which the procedure prescribed in sub - rule (2) of the said rule and apply.

5. Sub - rule (2) of Rule 56A says :

'The Collector may, on application made in this behalf and subject to the conditions mentioned in sub - rule (3) and such other conditions as may from time to time be prescribed by the Central Government, permit a manufacturer of any excisable goods specified under sub - rule (1) to receive material or component parts or finished products (like Asbestos Cement) on which the duty of excise or the additional duty [under Section 3 of the Customs Tariff Act, 1975 (5 of 1975) (hereinafter referred to as `the countervailing duty'] has been paid, in his factory for the manufacture of these goods or for the more convenient distribution of finished product and allow a credit of the duty already paid on such material or component parts or finished products, as the case may be .'

6. The first proviso to this sub - rule says that no such credit of duty shall be allowed in respect of any material or component parts used in the manufacture of finished excisable goods if such finished excisable goods produced by the

manufacturer are exempted from the whole of the duty of excise leviable thereon, or are chargeable to nil rate of duty. The proviso prescribes yet another condition namely, that the duty must have been paid for such material or component parts under the same item as the finished excisable goods, or remission or adjustment of duty paid for such material or component parts has been specifically sanctioned by the Central Government. It is not necessary to notice the other provisions of the rule.

7. The petitioner was permitted by the Assistant Collector of Central Excise, Hyderabad-III Division, through his letters dated 20-4-1981 and 24-7-1981 to avail of the concession provided by sub - rule (2) of Rule 56A, to receive duty paid aluminium ingots, falling under Tariff Item 27(a)(i), subject to the observance of the conditions prescribed in the said rule, as amended from time to time, and the insgtructions issued in that behalf by the Collector of Central Excise, Hyderabad, from time to time, for the manufacture of finished excisable goods. Accordingly, the petitioner has been availing of the benefit of Rule 56A(2).

8. Under Rule 8(1) of the Central Excise Rules, the Government of India issued Notification No. 193/81-C.E. dated 3-12-1981, exempting aluminium of the description specified in Column 3 of the Table annexed hereto, and falling under the sub - item specified in the corresponding entry of Column 2 of the said Table , from so much of the duty of excise leviable thereon as is in excess of the duty specified in the corresponding entry in Column 4 of the said Table. The notification deals with, and is confined to 'Aluminium', i.e., Tariff Item No. 27 in the First Schedule to the Act. In so far as it is relevant, the Table annexed to the notification reads as follows :-

--Sl. Sub Description Rate ofNo. Item duty--1. (a)(i) Aluminium in any crude form Twenty per cent adincluding ingots, bars, blocks valorem:slabs, billets, shots andpelllets.(a)(ii) Wire bars. Twenty one per centad valorem :xx xx xx6. (aa) Haste and scrap Twenty per cent advaloreem :7. (b) Manufactures, namely, plates, Twenty six per centsheets, circles (other than ad valorem :circles having thickness ofand above 0.56 mm. but notabove 2.00 mm.), strips, shapesand sections in any form or sizenot otherwise specified.--

9. The proviso appended to the notification, however, says :

'..... in respect of goods specified against Serial Nos. 2, 5, 7, 8, 9, 10, 11 and 12 of the said Table and manufactured from aluminium of any description mentioned in Column (3) of the said Table on which the duty of excise or the additional duty leviable under Section 3 of the Customs Tariff Act, 1975 (51 of 1975) has been paid, the exemption contained in this notification in respect of such goods shall apply only if an officer not below the rank of Assistant Collector of Central Excise is satisfied that the said duty or the additional duty, as the case may be, had been paid at the rates specified in this notification or in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 264 - Customs, dated the 3rd December, 1981.'

10. A regarding of the notification shows that with a view to reduce the overall price of aluminium, products to the consumers , the rates of excise duty have been reduced. So far as the petitioner is concerned, it purchases aluminium ingots, mentioned at Sl. No. 1 of the Table, and manufactures wire bars, plates , sheets and circles, etc. mentioned at Serial Nos. 2 and 7 of the said Table. Excise duty payable on the said three items of goods has been reduced/lowered by the said notification. But the petitioner can be permitted to pay duty at the reduced rates on the products manufactured by it only if it satisfies the appropriate officer that the goods manufactured by it have been manufactured out of aluminium ingots upon which duty has been paid at the reduced rate as per the notification. In other words, duty at the reduced rate will be levied on the goods manufactured by the petitioner only if the aluminium ingots, out of which these goods have been manufactured, have also been taxed at the reduced rate as per the notification.

11. The petitioner is availing of, and the Assistant Collector has allowed the petitioner to avail of the benefit of the said notification (benefit of partial exemption, or the benefit of lower rate of duty, as it may be called), which is evident from the classification list of excisable goods submitted by the petitioner on 11-1-1982 and approved by the Assistant Collector on 6-2-1982 , with effect from 11-1-1982.

On 10-8-1982, the Assistant Collector directed the petitioner not to avail of any proforma credit of the duty paid on aluminium ingots purchased by it from out of the duty paid on the goods manufactured by it. The letters reads as follows :-

'CENTRAL EXCISE, HYDERABAD III DIVISION SECUNDERABAD

C. No. V/27/17/28/82. Dated : 10-8-1982.

To

M/s. Galada Continuous Castings Ltd.,

L. 4 No. 2/73 (Aluminium),

UPPAL. (Through the Supdt., C.E. Uppal II Range).

Sir,

Sub : Central Excise - Approved classification List - Reg.

Please refer to your classification list Serial No. 10A/82 approved in this officer letter C. No. V/27/17/28/82, dated 6-2-1982.

Aluminium products mentioned at Serial Nos. 5, 7 and 8 of the classification list were permitted to be cleared on payment of lower rate of duty under the Notification No. 193/81, dated 3-12-1981, provided these products are manufactured out of material on which duty has been paid at the rate prescribed in this notification. The proforma credit availed by you for the clearance of the said products is not correct, as the raw material used would then become non - duty paid. Consequently, the products would not be eligible for the lower rate of duty under this notification.

Therefore, you are directed not to avail of proforma credit of the duty paid on the raw material 'Aluminium Ingots'. The proforma credit already with effect from 11-1-1982 should be re - credited.

Yours faithfully,

Sd/-

ASSISTANT COLLECTOR,

Central Excise, Hyderabad II D/n.'.

12. A regarding of this legtter shows that the only reason for denying the benefit of Rule 56A(2) to the petitioner is that it has availed of the benefit of the notification dated 3-12-1981. The 1st respondent is of the opinion, as stated in the said letter, that if the petitioner is allowed to avail of the benefit of proforma credit under Rule 56A(2), 'the raw material used would then become non - duty paid'. For the said reason, it is stated, the petitioner's products would not be eligible for the lower rate of duty under the said notification. The petitioner says that it made a representation against the said letter, but received no reply, whereupon it approached this Court, while the respondents say that while the petitioner's representation was under consideration, it rushed to this Court by way of this writ petition. Be that as it may, this writ petition was filed on 25-8-1982 and an interim order obtained suspending the operation of the said letter/order dated 10-8-1982.

13. Counsel for the petitioner, Sri S. Parvatha Rao, assails the correctness of the reasoning contained in, and the basis of the impugned letter/order. The fact that the petitioner is availing of the benefit of the notification dated 3-12-1981, Counsel says, cannot be a ground for denying the benefit of Rule 56A(2) to the petitioner. He questions the assumption of the Assistant Collector that by allowing the petitioner to do so would make the raw material used by it `non- duty paid'. On the other hand, the learned Standing Counsel for the Central Government supports the reasoning contained in the impugned order.

14. In our opinion, the benefit of proforma credit provided by Rules 56A(2) is distinct from the benefit and concession provided by the notification dated 3-12-1981. The notification merely reduces the rate of duty payable on aluminium ingots and aluminium wire bars, as well as aluminium plates, sheets, circles, etc. Instead of the duty mentioned in the First Schedule, the lesser duty prescribed in Column 4 of the Table in the said notification became payable. The said notification did not provide that persons availing of the benefit under the notification will be deprived

of the benefit of the proforma credit under the Rule 56A. Indeed, it is brought to our notice by the learned counsel for the petitioner that wherever similar notifications intended that the benefit of the such notification and the benefit of proforma credit should not be availed of simultaneously, the notification said so expressly; for example, Notification No. 185/84- C.E. , dated 1-8- 1984, which expressly stated :

'Provided also that in respect of goods specified in S. No. 4 of the said Table the exemption contained in this notification shall not apply if credit of duty paid on the ingots or billets used in their manufacture, has been taken under Rule 56A of the said Rules ....'

15. Similarly, another Notification, i.e., No.67/82-C.E., dateds 28-2- 1982 as amended on 1-3-1983 and 13-5-1983, also contains a proviso that 'nothing contained in this notification shall apply to a manufacturer who avails of the special procedure prescribed under Rule 56A of the CEntral Excise Rules, 1944, in respect of the duty paid on the base paper or base paper board.' A similar provision is contained in yet another notification, bearing

o.208/83-C.E., dated 1-8-1983.

16. In the circumstances, there is ample force in the contention of the learned counsel that the petitioner, by availing of the benefit of the notification dated 3-12-1981, is not deprived of the benefit of proforma credit under Ruled 56A. Of course, it goes without saying that for availing of either benefit, he must satisfy the relevant requirements. For availing of the benefit of the notification the petitioner must satisfy the requirements of the said notification, and similarly for availing of the benefit of proforma credit under Rule 56A, it must comply with the terms and conditions of the said Rule and the orders issued thereunder, But, we are unable to say that the availing of the benefit of the notification deprives the petitioner of the benefit of Rules 56A)2), which it was allowed the avail of earlier. We are also unable to appreciate the main basis of the impugned letter/order that allowing the petitioner of avail of the proforma credit would make the raw material used by the petitioner `non-duty paid. As observed nereinbefore, all that the notification dated 3-12- 1981 does is to reduce the rate of excise duty. it does not exempt any of the

goods mentioned therein from the payment of excise duty altogether. In such a case, there is no question of the aluminium ingots purchased by the petitioner becoming `non-duty paid. Accordinly, we hold that the impugneds letter/order is misconceived in law and, accordinlg, the respondents have to be restrained, by a writ of mandsamus, from giving effect to it.

17. In the counter-affidavit an objection is raised that the petitioner shed to this Court without availing of the alternative remedies provided by the Act itself, and that this Court should not entertain the writ petition in such situation. We are, however, of the opinion that having entertained the writ petition five years back, i.e., in August, 1982, and granted an interim order, it would not be a proper exercise of discretion to dismiss the writ petition today on the ground of alternative remedy. We are, therefore, not inclined to entertain the said objection at this stage of the proceedings.

18. For the above reasons, the writ petition is allowed. The respondents are restrained from giving effect to the impugned letter dated 10-8-1982 against the petitioner. There shall be no order as to costs.