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Commr. of Cus. and C. Ex. Vs. Metal Moulding and Processing

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-09-2006

Judge : J Balasundaram, Vice-, V T M.

Appellant : Commr. of Cus. and C. Ex.

Respondent : Metal Moulding and Processing

Judgement :

1. In this case the lower appellate authority, against whose order the Revenue is in appeal, accepted the claim of the Revenue that spares for pressure cookers manufactured and cleared by the respondent herein fall for classification under CETA subheading 7323.90 and not under CETA sub-heading 7323.10 which covers complete pressure cookers. However, in spite of the acceptance of the Revenue's stand on classification he dropped the demand of Rs. 23,448/- raised in the show cause notice for the period May to July, 1997 on the sole ground that the demand was made under Rule 9(2) of the Central Excise Rules which applies only to goods cleared clandestinely and not when the removal of the goods within the knowledge of the authority. However, as rightly pointed out by the learned SDR. the notice itself proceeds to invoke provisions of Rule 9(2) read with Section 11A of the Central Excise Act and therefore once the Commissioner (Appeals) has accepted that the product in dispute was not complete pressure cooker falling for classification under CETA sub-heading 7323.10, but was covered as "Others" under CETA sub-heading 7323.90 he was required to uphold the demand. In this view of the matter we set aside the impugned order by upholding the duty demand

raised and confirmed by the original authority as sustainable.

However, in the face of the fact that the demand is within the normal period of limitation and also noting that the assessee had filed a declaration, no case for imposition of penalty is made by the Revenue.

We, therefore, restore the order of the adjudicating authority only in so far as it relates to demand of duty.

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