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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-18-1983

Reported in : (1983)(13)ELT1676TriDel

Appellant : Testeels Ltd.

Respondent : Collector of Customs and Central

Judgement :

1. The short point, involved in this case is whether Zinc ash, dust and dross were, during the period from 1975-76 to 1980-81, classifiable under item 68 of the Central Excise Tariff, as held by the Collector, or under item 26B (1) thereof, as urged by the appellants.

2. During the hearing of this appeal today, the appellants stated that zinc ash, dust and dross arose in their factory out of duty paid zinc unwrought during the process of galvanisation of transmission line towers, that zinc dross and ashes were specifically mentioned in item 26B (1) of the Tariff as included in the category of zinc unwrought and so could not be consigned to the residuary item 68, that this was a case of zinc unwrought coming out of duty paid zinc unwrought and hence there could be no further duty liability on the appellants. For this, they relied on this Tribunal's earlier order in the case of M/s Chemitech Industries 1983 ELT. 551 and added that in terms of a notification also zinc unwrought manufactured out of duty paid zinc unwought was fully exempt from duty. The appellants pointed out certain other infirmities in the impugned order also but pressed for their substantive argument as stated above and requested for a decision on merits of the case.

3. The Department's representative stated that he had come across the Trade Notice No. 69/Zinc-1/83 dated 3-6-83 issued by the Collector of Central Excise, Guntur in which it had been accepted that zinc dross and ash were classifiable under item 26B and the Collector's earlier Trade Notice of November 1981 classifying these goods under item 68, which decision was perhaps the provocation for the impugned order, stood cancelled. He wanted time to check the position firmly from the Department before conceding the appellants' case. He agreed with the appellants that the Collector had not given any reasons for classifying the goods under item 68.

4. We have carefully considered the matter. We agree with the earlier Tribunal order cited above. Goods specifically included in item 26B (1) have to be assessed under that item only, read with the relevant exemption notification in force, and not under the residuary item 68.

Though zinc dust was not specifically mentioned in item 26B (1), it is similar to zinc dross and ash and it too, therefore, was classifiable as zinc unwrought under the said item.

5. We allow the appeal accordingly with consequential relief to the appellants.