

Deccan Copper Commutators and Vs. Collr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Feb-08-1989

Reported in : (1989)(24)LC101Tri(Chennai)

Appellant : Deccan Copper Commutators and

Respondent : Collr. of C. Ex.

Judgement :

1. This appeal is directed against the order of the Collector of Central Excise (Appeals), Madras, dated 17-12-1987 rejecting the appellants' appeal and confirming the order of the Assistant Collector of Central Excise, Hubli, dated 31-8-1987.

2. The appellants herein are manufacturers of copper rods, flats and strips. Copper wire bars were imported by M.M.T.C. on behalf of appellant on payment of countervailing duty at the rate of Rs. 3000 - per Metric Tonne in addition to the Special Excise Duty. The copper wire bars were sent by the appellants to Ms. Navyug Steel Industries for purposes of construction into copper rods. Oats and strips and the goods were received by the appellants on such conversion and thereafter the appellants reduces the size and thickness of the rods, flats and strips. The appellants were permitted to avail the proforma credit faculty in terms of Rule 56A of the Central Excise Rules by order of the Assistant Collector of Central Excise, Hubli. dated 14-2-1985 in respect of the said goods. While filing the classification list, the appellants initially claimed the benefit of concessional Central Excise Notification No. 174/84-C.E. dated 1-8-1984 and the same was

also approved by the Department. Subsequently the Department finding that the appellants availing the proforma benefit in terms of Rule 56A would be disentitled to the concessional benefits in terms of Notification No. 174 /84 referred to supra, instituted proceedings by means of Show Cause Notice dated 29-11-1985 which eventually culminated in the present impugned order appealed against.

3. Shri Sriram Panchu, the learned Counsel for the appellants, submitted that the appellants are not entitled to the benefit of Notification No. 174/84 but would be entitled to the benefit of Central Excise Notification No. 175/84, dated 1-8-1984. It was only by mistake, the appellants instead of mentioning Notification No. 175/84 had mentioned in the classification filed by them, the Notification No.174/84. It was urged that the appellants admittedly have paid the countervailing duty which is excise duty available for proforma credit in terms of Rule 56A and the appellants should be permitted to avail proforma credit not only in respect of the countervailing duty paid by the appellants in respects of the goods at the time of import, but also the duty paid by M/s. Navyug Steel Industries in respect of the clearances of rods, flats and strips. It was urged that if credit in respect of these items is given in favour of the appellants, the appellants would not be liable to pay any duty at all. The learned Counsel further submitted that the original authority, viz. the Assistant Collector of Central Excise has not addressed himself to the question as to whether the appellants are entitled to the benefit of Central Excise Notification No. 175/84 cited supra, nor has the Assistant Collector adverted to, much less considered the plea of the appellants that the proforma credit in terms of Rule 56A will have to be taken into account in calculating the quantum of duty payable by the appellants. The learned Counsel also submitted that notwithstanding the fact that the appellants took out a licence, filed classification list and cleared the goods on payment of duty, in their reply to the Show Cause Notice issued by the Assistant Collector on 29-11- . 1985 put forth a specific plea that the processes adopted by the appellants viz.

in reducing the thickness and size of the rods, flats and strips would not amount to manufacture within the meaning of Section 2(f) of the Act and therefore, would not be excisable. The learned Counsel submitted that though the various pleas urged by the appellants in the reply to the Show Cause Notice have been set out by the

original authority in the impugned order, the original authority has not considered them at all, and has merely held that the appellants would not be entitled to the benefit of Notification No. 174/84 and levied a duty in terms of Notification No. 175/84.

4. Shri K.K. Bhatia, the learned S.D.R. submitted that it is not disputed by the appellants that the appellants are not entitled to the Notification No. 174/84 and the original authority has not gone into the question with reference to the applicability of the Notification No. 175/84, dated 1-8-1984 as amended in favour of the appellants. The learned S.D.R. further submitted that in discharging the duty liability in terms of Notification No. 175/84, the appellants would be entitled to take credit in respect of the duty suffered by the inputs inasmuch as the appellants had been permitted to avail proforma credit in terms of Rule 56A. The learned S.D.R. further submitted that the appellants would not be entitled to claim set off in respect of the countervailing duty of the goods in question and would be entitled to take credit under the proforma facility only in respect of the duty suffered by the inputs at the hands of M/s. Navyug Steel Industries. The learned S.D.R. also submitted that the question as to whether the appellants are the manufacturers or not in respect of the goods in question is a non-issue in the present appeal 5. We have carefully considered the submissions made before us. The short question that arises for our consideration in the present appeal is whether the appellants are entitled to the benefit of Notification No. 175/84 or not. It is a common case that the appellants are not entitled to the benefit of Notification No. 174/84 and indeed the proviso to Notification No. 174/84 is categorical and that the Notification would be applicable provided "no credit of duty paid on the inputs has been taken under Rule 56A of the said Rules". We have gone through the reply to the Show Cause Notice given by the appellants and the appellants have clearly taken the plea claiming the benefit of Notification No. 175/84. No doubt the appellants have also pleaded in the reply to the Show Cause Notice that they cannot be considered to be manufacturers in respect of the goods in question within the meaning of Section 2(f) of the Act. The original authority viz. the Assistant Collector of Central Excise has not considered the applicability of Notification No. 175/84 to the appellants in the facts and circumstances of the case nor has the original authority adverted to much less considered the question as to whether the

appellants would be entitled to claim set off in respect of the duty suffered by the inputs in question and also the countervailing duty. As rightly contended by the learned S.D.R., the question as to whether the appellants are manufacturers or not in respect of the goods in question is not an issue for determination in the present appeal. We would like to note that a Show Cause Notice was issued by the authorities calling upon the appellants to show cause as to why the differential duty of Rs. 1,91,597.01 should not be levied on the ground that the appellants are not entitled to the benefits of Notification No. 174/84. The appellants also admittedly joined issue with the Department only on the limited question that the duty suffered by the inputs should be set off against the appellant's duty liability when the appellants had been permitted to avail proforma credit in terms of Rule 56A of the Rules. Therefore, we hold that the issue in regard to the manufacture does not arise for consideration in the present appeal and it is open to the appellants to urge the question if it is permissible in law in other proceedings.

Therefore, without expressing any opinion on the merits of the issue, in view of the fact that the basic issues raised by the appellants in the reply to the Show Cause Notice have not been considered by the original authority, we set aside the impugned order appealed against and remit the matter for reconsideration by the original authority in the light of our observations made above.

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