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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-07-1992

Reported in : (1992)(42)LC694Tri(Delhi)

Judge : H Chander, Vice, K T P.K.

Appellant : Modern Steels

Respondent : Collector of Central Excise

Judgement :
1. Modern Steels Ltd., Gobindgarh (Punjab) has filed an appeal being aggrieved from the order passed by the Collector of Central Excise (Appeals), New Delhi. Briefly the facts of the case are that the appellants are engaged is the manufacture of steel ingots with the aid of arc electric furnace, and had transferee 279.245 metric tonnes of steel during the period from December, 1979 to February, 1980 without payment of central excise duty to their other section for the manufacture of other products. They manufactured 253.622 metric tonnes of iron steel products falling under tariff item No. 26AA(1a) out of the steel ingots of 279.245 metric tonnes and cleared the same on payment of central excise duty at the rate of Rs. 100.00 per metric tonne basic excise duty plus 5% special excise duty and discharged basic excise duty amounting to Rs. 25,362.20 plus Rs. 1268.22 as special excise duty on the basis of "later the better" for which, as per the revenue, the appellant was not entitled. The revenue was of the view that they should have discharged duty at first stage on 279.245 metric tonnes of steel ingots of which the appellant had effected clearances without payment of central excise duty, the duty

on which worked out to be Rs. 27,924.50 as basic excise duty and Rs. 1396.22 as special excise duty. Demand show cause notice dated 11th June, 1982 was issued calling upon them to show cause as to why they should not be required to pay a sum of Rs. 2690.41 which was short levied in respect of steel ingots cleared without payment of central excise duty. In reply to the show cause notice the appellant had pleaded for following the 'later the better' principle and had claimed for quashing of the demand. The Assistant Collector had confirmed the demand of Rs. 2690.41.

1A. Being not satisfied with the order passed by the Assistant Collector, an appeal was filed before the Collector (Appeals) and the Collector (Appeals) had confirmed the findings of the Assistant Collector and had rejected the appeal.

2. Being aggrieved from the aforesaid order, the appellant has come in appeal before the Tribunal.

3. Shri P.S. Bedi, the learned consultant has appeared on behalf of the appellant. He reiterated the facts. In support of his argument, he pleaded that the 'later the better' principle will be followed and he also cited a decision of the Delhi High Court in the case of Modi Carpets Limited and Anr. v. Union of India and Ors. where the Delhi High Court had held that where the goods are used within the same factory, it does not amount to removal under the Central Excise Act. Shri Bedi also drew the attention of the Bench to notification No. 223/62-CE dated 29th December, 1962. Shri Bedi cited the following decisions: (2) 1978 ELT J121 : 1978 Cen-Cus 55D (Delhi) Delhi Cloth and General Mills Co. Ltd. and Anr. v. Joint Secretary, Government of India and Anr.

Shri Bedi also referred to trade notice No. 31/1962 dated 18th May, 1962 of Allahabad Collectorate, which appears on page 11 of the paper book. On 'later the better' principle (sic) referred to Board's letter F. No. 139/39/74-CX. 4 dated 29th June, 1976 which appears in page 12 of the paper book. Shri Bedi also pleaded that prior to 1983 both tariff items (sic) and 26AA were two different entries and both were covered in terms of notification (sic) under Rule 56A. After 1983 both the products viz. tariff item 26 and 26AA were (sic) into one tariff item 25. Shri Bedi had also cited a decision of the Supreme Court (sic) the case of Rathi Steels where the Hon'ble Supreme Court had observed that the decision given (sic) the Government should be adhered to. Shri Bedi also referred to notification No. (sic). He pleaded that the period in dispute is December, 1979 to February, 1980. (sic) pleaded for the acceptance of the appeal.

4. Shri S.K. Sharma, the learned JDR who has appeared on behalf of the respondent, (sic) that the 'later the better' principle has got no legal sanctity and it does not apply (sic). He argued that the central excise duty is to be paid on the goods manufactured by (sic) appellant.

During the process of manufacture different products emerge which fall under different tariff item, the duty is to be paid on that tariff item in accordance with the provisions of the charging section. He also pleaded that Rule 56A will apply only in those cases where it falls under the same tariff item, and here the ingot and the final product falls under different tariff items. He pleaded that the products are excisable and there is no exemption for ingots. He pleaded that there is a decision of the Tribunal in the appellant's own case vide order No. 552/87-B1 dated 25th August, 1987 in the case of Modern Steels Ltd. v. Collector of Central Excise, Chandigarh. He pleaded that the earlier decision of the Tribunal should be followed and the appeal should be rejected.

6. Shri Bedi, the learned consultant, in reply pleaded that when the Tribunal had given the earlier decision, no case law was cited and the facts and the legal position was not placed properly and as such, the earlier decision of the Tribunal does not become a precedent He pleaded for the acceptance of the appeal.

6. We have heard both the sides and have gone through the facts and circumstances of the case. We have perused the earlier (order) passed by the Tribunal in appeal No. E/2391/83-B1 in the case of Modern Steels Ltd. v. Collector of Central Excise, Chandigarh vide order No.552/87-B1 dated 25th August, 1987. The facts of the present case are similar. We do not find any reason to deviate from the earlier decision of the, Tribunal. Paras 3, 4 and 5 from the said judgment are reproduced below: 3. But some assessees like this one - but they are by no means the only one - were not allowed the facility; some others were first given it only to find it stopped. In all these cases, the Assistant Collector or somebody said

that there is nothing in the law to allow it and, therefore, he would not comply with the principle. So between the Government of India/Board and the assessing Officer was the hapless assessee who finds himself shipping in more water than he can bail out. The Assistant Collector, in fact, dismissed the later the better principle in one sentence by saying it was not applicable to this assessee. He declared that it was not tenable of say that the duty on iron and steel products had an added element of the previous stage. The Collector (Appeals), of course, says nothing that we can hang anything on.

4. The appellants have produced a copy of an order C. No. V(Review) 26/CE/AA&R/82/393 dated 19.1.1983 in which the Collector of Central Excise, Chandigarh, approved the later the better principle; the learned Counsel claimed that this should settle the issue in their favour. Unfortunately, it does not.

5. The law is on the side of the Assistant Collector who said that duty had to (sic) paid on the ingot and that the later the better principle had no basis. There is (sic) sanction in the law for not charging duty on ingots if ingots are excisable goods (sic) are leviable to duty. These ingots were excisable goods and were leviable to duty and so the fact that they were used in the same factory for the manufacture of (sic) products would not protect them from the duty. To desist from recovering duty (sic) assessing officers would have to be armed with an exemption. An exemption is (sic) only shield under which the ingots can travel unscathed: if there isn't one, then (sic) duty becomes payable and there is nothing we can do about it. It is tragic that (sic) are such conflicts within the same central excise department and the Board (sic) duty should not be levied and the assessing officer says he is going to collect it. (sic) assessee is, as always, the fall guy. But the sticking point is the absence of (sic) exemption and, therefore, on strict legal principles, the Assistant Collector is (sic) that the duty on the ingots must be paid. Therefore, I cannot interfere.

7. In view of the above discussion, we do not find any merit in the appeal. The appeal is dismissed.