

Collector of Central Excise Vs. Metal Tube Rolling Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-12-1994

Reported in : (1994)(74)ELT883Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Metal Tube Rolling Mills

Judgement :

1. This Reference Application is filed seeking reference on the questions formulated and pleaded to be the questions of law arising out of the order of this Bench No. 987/93-WRB, dt. 21-6-1993 in Appeal No.E/676/92-Bom.
2. The issue relates to denial of the Modvat credit on the deemed credit basis in relation to the scrap purchased by the respondent from ammunition depots. This Bench in the impugned order allowed the respondent's appeal by holding that there was no clear proof available on record to show that the scrap generated and produced by the appellant had not suffered any duty and as such it could not be said that the item was clearly recognisable as non-duty paid resulting in denial of the benefit as per the Govt. of India's Order No.B/22/5/86-TRU, dt. 7-4-1986.
3. The Dept. wants the following issue to be raised and referred to the High Court: "The inputs copper scrap & brass scrap is clearly recognisable as non-duty paid and therefore as per the Govt. of India's order issued under F. No. B-22/5/86-TRU, dt. 7-4-1986 no deemed credit is available if the inputs are clearly recognisable as being non-duty paid or charged to nil rate of duty." 4. Shri Ravinder Jain, the Id.

JDR at the time of his submission during the hearing of this application has come out with the prayer that the deptt. has now been able to procure enough material to show that the scrap that was sold in the ammunition depots, was generated out of the items which are not duty paid and as such the same was recognisable as non-duty paid, making them not eligible to get the deemed credit under the relevant Govt. orders. He referred to the letter received from the Ammunition depot but conceded that this was the letter received after the impugned order of the Tribunal was passed. He basis his submission for reference number on the said letter and pleads that the said letter clearly establishes that the view taken by the Tribunal is not correct and also refers to the Tribunal's observation in the said order that no proper investigations appear to have been carried out to ascertain the duty paid nature of the goods. In his submission now that the factual position is clarified and there being misleading of the evidence, the question of law has arisen which ought to be referred.

5. Shri V.K. Jain, the Id. C.A. however, opposed the same by submitting that the Tribunal has formulated the opinion on the facts and circumstances as were existing at the time of passing of the appeal and any new evidence procured at a later date could not be used for the purpose of pleading an erroneous finding of the Tribunal.

6. Going through the records and the submissions now made it appears that the deptt. is seeking reference on the issue which is basically one of fact and by procuring the evidence which was not available at the time of decision in the appeal. The provisions for reference to the High Court are restricted only to such of the issues which arise out of the order of the Tribunal, given in the specified set of circumstances existing at the time of hearing of the appeal. They cannot be used for the purpose of bringing on record any other evidence procured subsequent to the decision in the appeal and not brought to the notice of the Tribunal.

7. Reading the issue as formulated it is purely a question of fact and no issue of law can be said to have arisen. In the result, the Reference Application cannot be entertained and is rejected.

