

Press N. Forge Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-15-1994

Reported in : (1994)(74)ELT894Tri(Mum.)bai

Appellant : Press N. Forge

Respondent : Collector of Central Excise

Judgement :

1. An application has been made for restoring the appeal which was earlier dismissed for non-prosecution. It was pleaded that there was misplacement of the hearing notice, on account of which they could not attend the hearing.
2. Shri Mukesh Shah regretted the same and pleaded for taking back the appeal for disposal.
3. After hearing both sides, I agree to his request and thereafter proceeded to hear the arguments on the merits of the appeal.
4. The appeal is against the Order in Appeal No. GS/1070/BII/92, dated 8-1-1993 rejecting the appellant's appeal.
5. The facts of the case are that the appellants are manufacturing transformer parts. They bring copper scrap from outside as one of the inputs, which they wanted to send under Rule 57F(2) for conversion into rods and castings by job workers. These rods and castings returned by the job workers are subject to further machining and converted into machine parts. In that process, scrap is

further generated, which they sought to send to job workers along with the bought out scrap for conversion into castings and rods. The dept. objected to the removal of such generated scrap on the ground that they have to be cleared on payment of duty under Rule 57F(4) and could not be removed under Rule 57F(2). It was also alleged that though an application for removal of scrap was made to the Proper Officer, they have started moving the scrap on their own under delivery challans, without waiting for the permission. In view of these objections, adjudication proceedings were held by the Asstt. Collector. Orders for recovery of duty amount amounting to Rs. 55,339.34 on the copper scrap generated in their unit, but sent to the job workers under Rule 57F(2) without waiting for the permission, was confirmed. The Assistant Collector also imposed a penalty of Rs. 2,000/- on the appellant. The appellants went before the Collector (Appeals). The said order of the Assistant Collector was confirmed. Hence the present appeal before the Tribunal.

6. After hearing both sides, I find that in this case removal of bought out scrap as well as generated scrap was effected under the delivery challans and they have otherwise [complied] with the provisions of Rule 57F(2). They have also made an application for grant of permission, which was granted only after 7 months. In the circumstances it cannot be expected of them to wait for the permission indefinitely since the entire manufacturing operation is dependent on obtaining the castings and the rods from the job workers. Be that as it may, the demand is only in respect of generated scrap and not in respect of bought out scrap. Hence the allegation that they did not wait for the permission under Rule 57F(2) cannot be a sole ground for denial of the Modvat benefit in respect of generated scrap. However, on the question of law, the departmental representative pleads that copper scrap is an excisable item and it is final product by itself and has to be cleared under Rule 57F(4), since it is manufactured by the appellant, Rule 57F(2) could not have been applied in such circumstances. Hence the demand is justified. Even I am inclined to agree with this legal proposition made by the deptl. representative, the consequences of duty payment have been completely lost sight of by the authorities. When the duty is paid on the generated scrap, it becomes a duty paid input for the appellant, which can be legitimately sent to the job workers under Rule 57p(2), for which no objection can be taken by the deptt. Only for this reason

the Board appears to have allowed such generated scrap of Aluminium under Rule 57F(2) in an earlier circular. Hence, so long as the dept. is satisfied that the scrap generated has been sent to the job workers and processed goods have been returned in the form of rods and castings to the appellant, there is no purpose in recovering the amount and again giving it as credit. Subject to verification of this aspect, the appeal from the appellant is allowed and the demand for duty could be confirmed, only if there was a diversion of generated scrap for any other purpose. In the circumstances, the penalty also is not sustainable and the same is set aside.

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