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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-03-1995

Reported in : (1995)(76)ELT116TriDel

Appellant : Rupnarayanpur Metal and Wire

Respondent : C.C.E.

Judgement :

1. The issu in this appeal is the classification of the casting of bars manufactured by the aappellant and the consequential eligibility or otherwise in Notification 67/89-C.E. The appellant by his letter dated 6th October, 1994 has waived the hearing and requested a decision on merits. The Collector of Central Excise also filed a Cross-objection and was represented by Shri K.K. Jha, SDR.2. The Cross-objection filed by the Collector is hopelessly barred by limitations, having been received on 22nd December, 1993, whereas the notice has been received on 31-3-1992. No satisfactory reason has been furnished for the delay in the application for condonation. The Cross-objection is dismissed as barred by limitation.

3. The facts leading to appeal are briefly, as follows. The appellant claimed the classification of the "bars of refined copper" manufactured by it under Heading 7407.11 of Central Excise Tariff and also claimed the benefit of Notification 67/89-C.E., dated 1st March, 1989. The Assistant Collector of Central Excise did not agree to the classification and proposed the classification under Heading 7419.91.

After considering the appellant's reply and hearing it the Assistant Collector confirmed the classification proposed. He noted that it had not been shown by the appellant that the copper was "refined copper" as defined in Note l(a) to Chapter 74. He further observed that the copper bars which were obtained by casting were not subsequently worked and therefore, could not be considered bars or rods by virtue of provision of Note l(b) to the Chapter. He did not accept the alternative classification under Heading 7403.19 claimed by the appellant.

4. Against this order, the appellant went to the Collector of Central Excise (Appeals), Calcutta. The Collector while disposing the appeal confirmed the classification decided by the Assistant Collector. This appeal is against that order. In the appeal, the appellant claims the classification under Heading 7403.19.

5. Although the department's Cross-objection has been dismissed (as indicated above), Shri Jha adopted the argument in the cross-objection.

These are essentially that the copper contents of the bars exceeds 99% as seen from the purchase order for the product made by M/s. Hindustan Cables Ltd. The product has therefore to be considered as refined cast copper bar and is classifiable under Heading 74.03. The cross-objection also relies on the fact that the cast copper'rods had been shown as classifiable under that sub-heading under Notification 67/89-C.E., dated [1-3-1989].

6. Refined copper has been defined in Note l(a) to Chapter 74.

According to this definition, refined copper should be metal containing at least 97.5% by weight of copper, provided that the content by weight of any element does not exceed the limit specified in the table below the sub-note. There are thus two definitions of refined copper. The goods cannot be considered refined copper in terms of the first definition. Since the purchase order of the Hindustan Cables only indicates that the copper content exceeds 99%, this does not mean that it cannot be less than 99.85%. In fact, the appellant, in its appeal to the Collector (Appeals) had itself stated that the copper bars on testing contained 99.1% copper. Therefore, for the bars to be considered to have been made of refined copper the content by weight by any of the other element should not exceed the

limit as specified in the table. If not, it will have to be considered a copper alloy in terms of Note l(b) to the Chapter. The classification would then depend upon what kind of alloy it is and would be under any of the sub-heading of Headings 7403.21 to 7403.29. Obviously the product is not made of a master alloy, since it does not confirm the requirement under Chapter Note 1. Neither the appellant nor the department is able to indicate what constitutes the remaining portion of the matter (1% or so).

Therefore, unless this is determined, it would not be possible to say whether the bars are made of refined copper or copper alloys. If, on test, they will be found to conform to the definition of Note l(a), the goods would be considered to have been made out of refined copper. In that case, the classification would be under Heading 7403.19, as the bars have not been worked out after being cast and therefore, have to be considered unwrought. The HSN Explanatory Notes on page 1044 makes this clear. If they do not conform to the definition in Note l(a), they would be considered to have been made out of copper alloy as provided in Note l(b). Subsequent classification has to be determined by the composition and identity of the remaining portion of 1% (or so).

7. The appeal is therefore, allowed by way of remand. The Collector shall determine the classification and the eligibility to the benefit of Notification under 67/89-C.E. after determining the composition of the product bars by testing and in accordance with the principles of natural justice.

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