

Jaln Steel Industries Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-07-1995

Reported in : (1995)(79)ELT336TriDel

Appellant : Jaln Steel Industries

Respondent : Collector of Central Excise

Judgement :

1. For reasons recorded below, we waive the requirement of pre-deposit and stay recovery of the adjudged amount of duty and penalty and proceed to take up the appeal itself with the consent of both sides.

2. The brief facts of the case are that the applicants are engaged in the manufacture of mild steel flats of thickness not exceeding 5 mm falling under sub-heading 7209.20 CETA, 1985 out of raw material (inputs) namely misrolls, for cutting, MS Rounds/Squares, round cutting etc. Scrutiny of the appellants' records revealed that deemed credit to the tune of Rs. 1,04,995.86 had been availed during the period 3-12-1986 to 19-6-1987 on 287.660 MTs of inputs which the Department alleges to be clearly recognisable as non-duty paid and hence not admissible in terms of the Ministry of Finance letter F. No.22/5/86-TRU, dated 7-4-1986. The contention of the appellants in the reply to the show cause notice dated 30-6-1987 and during the personal hearing that the Department had not discharged the burden of proving the non-duty paid character of the inputs as they were purchased from the open market, was negated by the adjudicating authority on the ground that consignees from whom the inputs were purchased were not

licensed and the vouchers do not contain any particulars of payment of duty, and confirmed the demand and imposed a penalty of Rs. 25,000/-.

3. The Collector (Appeals) rejected the appellants' application for stay and, by Stay Order No. 12, dated 13-6-1994, directed pre-deposit of the entire dues within 15 days from the receipt of the said order and since there was no proof of pre-deposit within that period, the appeal was rejected for non-compliance with the statutory requirement of Section 35F of the Central Excises and Salt Act, 1944.

4. We have heard Shri K. Kumar, learned Counsel and Shri Sanjeev Sachdeva, learned SDR.5. We find that no notice was issued to the appellants proposing dismissal of the appeal for non-deposit of the dues as confirmed as directed by the stay order. In the case of M.I. Metal Sections Pvt.

Ltd. v. Collector of Central Excise, Bangalore reported in 1995 (75) E.L.T. 470, the Karnataka High Court has held that it will not be proper for the Tribunal to dismiss the appellant's appeal mechanically merely because the appellant has failed to comply with the condition of pre-deposit. Therefore, we set aside the impugned order and remand the matter to the Collector (Appeals) for de novo adjudication in accordance with law. The appellants are at liberty to move a fresh stay application before the lower appellate authority who shall extend an opportunity of personal hearing to the appellants before passing fresh orders and proceeding further in accordance with law.

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