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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-27-1995

Reported in : (1995)(78)ELT252TriDel

Appellant : Sail

Respondent : Collector of Central Excise

Judgement :

1. This is an application for waiver of duty demand of Rs. 1,51,07,377.00 and personal penalty of Rs. 5 lakh imposed on the applicants herein by the Collector of Central Excise & Customs, Raipur in his order dated 31-10-1991.

2. Shri V. Sridharan, Id. Counsel arguing for the applicants submitted that the demand arises as a differential duty, according to the Department, which is payable under Heading 84.54 on ingot moulds and the differential duty is calculated taking into account the duty already paid by the applicants, herein, on clearance of the goods as scrap under Heading 72.03. The Id. Counsel submitted that the ingot moulds manufactured by them are used in their factory. Over a period of time, these ingot moulds become scrap as part of it also and get melted during the process of manufacture of ingots. The applicants, herein, melted most of the ingot moulds which have become unusable and some quantity was also cleared as scrap. For demanding of duty as scrap, the Department's interpretation is that the ingot moulds, which are cleared as scrap outside the factory by the applicants has to pay duty as ingot moulds under Heading 84.54 C.E.T.A. not as scrap. This is the Department's interpretation of the condition for such exemption

for ingot moulds as contained in Notification 54/86 as amended. This notification lays down a condition that the exemption for ingot moulds in the notification is available provided that such goods are used in the factory of production in the manufacture of steel ingots and are melted either during or after such use in the said factory. The Id.Counsel submitted that the semi-broken ingot moulds had been cleared by them on gate passes as scrap. The period involved in this case is between 1-4-1986 to 28-2-1991 and the show cause notice demanding the duty has been issued on 30-4-1991. The Id. Counsel submitted that the applicants clearly declared the item 'defective ingot moulds' being cleared as scrap in their classification list, which had been approved as well as the item of ingot moulds under Heading 84.54 which has also been approved by the jurisdictional Assistant Collector. They have submitted R.T. 12 Returns indicating clearance of ingot moulds as scrap. The R.T. 12 returns also included the internal documents of theirs which is called despatch advices and which is again showing the clearance of ingot moulds as scrap. These are described as semi-broken ingot moulds. The Id. Counsel pleaded that at best, in the circumstances, it can be regarded as a matter of differing interpretation of the condition as contained in Notification and in such a view of the matter, the Department cannot allege suppression of the facts by the applicants herein so as to invoke the longer period for demanding duty under Section 11A of the Central Excises and Salt Act, 1944.

3. Shri A.K. Singhal, Id. D.R. opposing the stay, drew attention to the manner in which the applicants have declared their product in their classification list and contended that there is clear suppression of facts by the applicants, herein. The notification wording is clear wherein it is stated that defective moulds which are cleared as such outside the factory will not get the benefit of the notification. He drew the attention to the reasoning of the Collector (Appeals) in the impugned order. As regards limitation, Id. D.R. pointed out that the applicants being a unit working under Record Based Control have a special responsibility to make declaration of their goods and to correctly determine the duty. They have failed to do so. The Id. S.D.R.also referred to the narration of the facts in the Collector's order wherein the Collector has referred to the letter issued by the jurisdictional Range Office to the applicants regarding the reason for the declaration made by them in the classification list and the Collector found that there was no response

by the applicants on this query from the Range Office. Relying on the Madras High Court judgment in the case of Limenaph Chemicals v. Union of India reported in 1993 (68) E.L.T. 77 (Mad.) and in the decision of the Tribunal in the case of Collector of Central Excise, Jaipur v. J.K. Synthetics Ltd. reported in 1994 (71) E.L.T. 285 (Tri.). The Id. S.D.R. submitted that these are the authorities to say that where such mis-declaration, as in this case, is detected by the Department, it will be justified for invoking longer period under Section 11A of Central Excises and Salt Act, 1944.

4. On a careful consideration of the submissions made by both the sides, merits of the case arising out of the interpretation of the wording of the condition in the exemption Notification 54/86 regarding ingot moulds is contentious issue and it cannot be said that prima facie case has been made out. As regards arguments on limitation, it is found that the classification list includes both the ingot moulds manufactured by the appellants herein as well as the entry relating to clearance of the waste and scrap under a general heading of waste and scrap of iron and steel which, inter alia, includes used ingot moulds and scrap. The Department's contention is that declaration in this manner is such that it cannot be said that there has been no suppression of facts by the applicants. The point will be arguable.

However, the main issue, we find, is on the question of interpretation of the exact wording in the interpretation as regards the condition thereof. In such circumstances and having regard to the fact that the applicants, herein, is a public sector undertaking of the Government of India, we direct that for the purpose of Section 35F of Central Excises & Salt Act, 1944, the applicants, herein, should deposit a sum of Rs. 75 lakh out of the duty demand on them on or before 31-5-1995 and on such compliance, the pre-deposit of the balance amount of duty and the whole of the penalty on them is dispensed with. The matter to come up for ascertaining compliance on 16-6-1995.

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