

Collector of C. Ex. Vs. Atam Concast Steels (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-15-1996

Reported in : (1996)(85)ELT360TriDel

Appellant : Collector of C. Ex.

Respondent : Atam Concast Steels (P) Ltd.

Judgement :

1. This appeal has been filed by the Collector of Central Excise, Chandigarh against the impugned order dated 8-8-1991 passed by the Collector of Central Excise & Customs (Appeals), Chandigarh by which the Collector (Appeals) has held that the respondents, herein, will be eligible for modvat credit @ Rs. 600.00 P.M.T. on ship breaking scrap of iron & steel received by them as input for their final product.

2. Shri Mewa Singh, Id. S.D.R. contended that the Collector (Appeals) order erred in holding that the respondents are eligible for the higher modvat credit and ignored the provisions of Notification 177/86 which restricts the modvat credit only to Rs. 500.00 P.M.T.3. Shri Kulwinder Singh, Id. Counsel for the respondents submitted d that the issue is no more res Integra and referred to a series of decisions in their own case wherein the Tribunal had held that the respondents have rightly availed of the modvat credit on the scrap at the higher rate.

4. On consideration of the submissions made by both the sides it is seen that in the Tribunal's Final Order No. M/459-6/95-NB, dated 22-11-1995, the Tribunal has

held that the gate passes clearly showed that the scrap received by the respondents was obtained from ships imported into India at the concessional rate of duty claimed in those gate passes either under Notification 65/89 or Notification 62/90 which are applicable to scrap obtained from breaking of imported ship. We have found in this case that there are similar gate passes indicating duty payment on this scrap under Notification 62/90. The Tribunal in this case cited (supra) had also followed the decision in the case of Upper India Manufacturing & Engineering Co. v. C.C.E. reported in 1994 (74) E.L.T. 590. Besides, we also note that there are other decisions on the same issue wherein the Tribunal has held in favour of the assessee holding that the higher Modvat credit cannot be denied unless the Department leads the evidence to show that the scrap was generated out of ships and other floating structures manufactured in India so as to attract the restricting provision under Notification 177/86. In this case also, there is no such evidence and on the other hand evidence led by the respondents indicates that the scrap emanated out of imported ship. Therefore, there is no substance in the appeal, which is accordingly, rejected. The Cross-Objection, being merely supportive to the impugned order, is misconceived and dismissed.

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