

Na Vs. Ari Processing Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-15-1996

Reported in : (1996)(85)ELT386TriDel

Appellant : Na

Respondent : Ari Processing Industries

Judgement :

1. Ld. Counsel stated that the Collector (Appeals) has disposed of the five appeals by a common order as the facts are similar and issues involved are the same.

2. The appellants are engaged in the activity of reducing the gauge of mild steel wire rods. The appellants buy wire rods of 8 m.m. diameter.

Thereupon these are drawn through a machine and its gauge is reduced.

3. The appellants buy the requirements of mild steel wire rods in the open market mostly from the Steel Authority of India Ltd. All sellers of mild steel rods pay duty and clear the said goods.

4. It was their contention that reducing the gauge of mild steel wire rods was not manufacture and thus the activity undertaken by the appellants did not amount to manufacture and they were not required to take out a central excise licence. But in view of the insistence of the department they took out a licence and followed the prescribed procedure, but claimed exemption w.r.t Notification No. 75/67, 113/80, 111/78 as the products manufactured out of duty paid iron and steel were exempt

from duty under these notifications.

5. It was their contention that the Superintendent had no jurisdiction to demand duty or otherwise under Section 11 A.6. Further the goods bought in the open market were presumed to be duty paid and the appellants were entitled to the exemption.

7. In support of their contentions they wish to rely on an unreported Order Nos. 38 & 39/86-VI in the case of M/s. Special Steels Limited, Bombay, and the Poona Collectorate Trade Notice dated 30-1-1991.

8. Ld. DR drew attention to the order-in-original and the order-in-appeal and stated that in this case the appellants had filed RT12 returns and at the time of completion of their assessment by the Superintendent he found that the amount in question were demandable.

9. The appellants have claimed that the process of drawing wires did not amount to a process of manufacture; However, the wire is a commodity different from wire rod and therefore excisable.

10. Their contention that the raw materials were duty paid is not acceptable because they have not produced any proof of duty paid thereon and merely a general letter from SAIL which was not sufficient.

11. Ld. DR further stated that the Superintendent was competent to complete the assessment on RT 12 in terms of Rule 173(1) and raise demand if necessary.

12. It was also his contention that although the appellants had approached the CBEC, the Board had expressed its inability to grant relief of excise duty in r/o steel wires manufactured from steel wire rods falling under Tariff Item 26A without production of documentary proof of payment of duty on wire rods.

13. Ld. Counsel reiterated his submissions and emphasised that duty can be demanded only w.r.t. Section 11 A and not w.r.t. Rule 173(1). It was also his contention that principles of natural justice were not duly observed as the demand has been raised without prior notice.

14. It was also his submission that the Tribunal has vide its order in the case of Eastern Industries and Marketing Co. reported in 1985 (21) E.L.T. 801 has held that the goods purchased in the open market under proper bills could not in the normal course come in the market without discharging the duty burden i.e. they are required to be treated as duty paid and not coming to this conclusion the Tribunal has relied on Delhi High Court judgment in the case of Sulekh Ram and Sons - 1978 (2) E.L.T. (J 525). It was their submission that in the present case they had produced proper bills/invoices of the goods purchased from the open market and also letters from the manufacturers of the goods that the same has been cleared by them from the factory were duty paid. Further as per a Trade Notice of Cochin dated 22nd June, 1983 the goods purchased from the market are deemed to be duty paid.

15. We have considered the above submissions. We observe that the appellants are correct in pointing out that it is a settled position in law that the goods purchased from the open market are required to be treated as duty paid unless proved otherwise.

16. Therefore, purchase of the material from Steel Authority of India Ltd. or open market does not make any difference to the fact that the burden is on the Department to show that the inputs were not duty paid and it has not discharged the burden.

17. It is also a settled position that wire rods even after being subjected to process of drawing for the purpose of reducing the dimension, remained a wire for excise purposes, and no new commodity emerged after such drawing as held in the case of Jyoti Engineering Corporation; but in the above cited case, the wire rod used was also treated as wire and the output was also a wire.

18. Further, the appellants have rightly drawn our attention to the order of the Additional Collector of Central Excise, Ahmedabad No. 2 to 12/ADDL. COLLR/1983, dated 29-1-1983 in which the Collector had dropped the proceedings in case of demands of duty in respect of wires drawn from wire rods after examining the case from both the angles, namely, (1) that the process involved did not amount to process of manufacture as claimed by the assesseees

and (2) even if it was a process of manufacture, the benefit of Notification No. 31/76 and 206/63 could not be denied.

19. He has referred to a situation similar to one in the present case where the material had been purchased from Steel Authority of India/open market and was therefore, deemed to be duty paid.

20. He had also found that the demands in those cases were time barred but instead of deciding the case on that ground preferred technical ground and was convinced that in the facts of those cases the manufacturer was not required to be apply for licence and in any case the benefit of Notification Nos. 152/77 and 206/63 could be denied to them and had dropped the proceedings. We agree with the observation and findings of the Collector in the above case.

21. It is obvious, therefore, that in the present case, learned Collector (Appeals) has erred in upholding the demands.

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