

Collector of Central Excise Vs. Modison Metal Refiners

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-12-1996

Reported in : (1996)(88)ELT563Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Modison Metal Refiners

Judgement :

1. Both the appeals from the Revenue are directed against the Order-in-Appeal No. M-I 156-1157/B-H-272-273/85, dated 18-7-1985 of the Collector of Central Excise (Appeals), Bombay.
2. Initially only a composite appeal No. E/3077/85 was preferred challenging the said order. Because by the said Order-in-Appeal the Collector (Appeals) has disposed of two orders-in-original, the procedural requirement necessitated filing of two separate appeals. On being pointed out, the department has filed second appeal bearing No.E/1289-R/96 and as the same is filed beyond the time limit specified, application for condonation is also filed.
3. Considering the reasons for the delay and also the fact that appeal initially filed challenged both the orders dealt with in the composite order in appeal, the delay in filing the appeal No. E/1289-R/96 is condoned.
4. Having orally declared the aforesaid order, both the appeals were taken up for final hearing and are being disposed of by this common order.

5. The Respondents have filed Cross objections which are in the nature of merely reply to the appeals filed. Hence they are not separately numbered and are treated to have been disposed of by this order.

6. The basic facts for both the appeals are identical and for the purpose of determining the point at issue, it is sufficient to mention that the respondents were, at the relevant period, engaged amongst other things, in refining Silver and during the said process they used to get gold in lump form, which they used to send, on due observance of the provisions contained in the Gold (Control) Act, 1968, for refining and conversion in Standard Gold Bars to the India Govt. Mint. The Respondents filed Classification List declaring Gold Bars as their product and classified the same under T.I. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (as it then existed) and claimed exemption vide Notification No. 94/81. Describing their manufactured product as Gold Bars, the Respondents mentioned that "Gold in impure form traced out while refining Silver in our Refinery at Deonar, is being sent to Government Mint at Fort Bombay and after refining Gold Bars are manufactured and cleared on payment of appropriate Excise duty under T.I. 68 and then to our office at Nariman Point for sale on Invoice". It was however felt that the entry was not proper as what the Respondents manufactured was Impure Gold traced out while refining Silver and processed and hence they could not claim benefit of Notification No. 94/81. The Classification Lists were, therefore, returned for appropriate correction and on their challenging the said approval, the Classification Lists were approved by denying benefit of Exemption Notification No. 94/81.

7. The Respondents preferred appeals against such approval of Classification Lists and the Collector (Appeals) vide impugned order held that the Respondents were eligible to claim exemption.

8. Mr. S.V. Singh, the Id. JDR has submitted that during the process of refining silver, the respondents get gold in lump form and as such, what has been manufactured by them is gold in lump form and the gold being a dutiable item, the Respondents are liable to pay the duty and the exemption notification does not cover the type of manufacturing process and as such, benefit thereof was rightly

denied by the Assistant Collector while approving Classification Lists and that the approach of the Collector (Appeals) being not correct, the said order is required to be set aside and the original order should be restored.

9. Mr. S.N. Sejpal, the Id. Advocate for the Respondents has, however pleaded that basically they refine Silver and in doing so, a very small quantity of silver at the ratio of 100:05 emerges out, which is impure and fineness thereof is also unascertained. Such lump is absolutely impure and is not even marketable and would be of no utility unless and until the same is purified, which process is undertaken at Government of India Mint at Bombay, where they used to send for that purpose and conversion into Standard Gold Bars, which are removed on payment of appropriate duty by the Mint Authorities. He also pleads that the Gold Bars are only recognised marketable commodity. In his submission, demanding duty on the gold in lump form is absolutely unwarranted. He has also pleaded that such duty is not demanded from any other such refiner and if duty is demanded that would tantamount to double taxation.

10. Considering the submissions and going through the record made available the issue that emerges out is, whether Gold in lump would be an excisable commodity.

11. The words "Excisable Goods" have been defined in Section 2 of the Central Excises & Salt Act and time and again included in the recent judgment in Union of India v. Indian Aluminium -1995 (77) E.L.T. 268 (SC), the Supreme Court have held that in ascertaining whether the goods become excisable goods they must be [marketable] i.e. it must be a merchandise or a commodity which is being bought and sold by merchants and traders and capable of being sold to the consumers. (Ref: Union Carbide India Ltd. v. U.O.I. -1986 (24) E.L.T. 169 (SC).

12. No evidence is adduced to show that the gold in lump recovered by the Respondents, while refining Silver, is a marketable commodity. The Respondents have on the other hand, pleaded that some percentage which also is unascertained gets extracted while refining Silver and fineness thereof, at that stage is unascertained. Such gold lump itself is full of impurities and as such, it requires to be refined and the refining thereof is done at India Government Mint,

which at the relevant time was the only agency capable and permitted to do so and bring out the gold in the Standard Gold Bars while alone assume the status of marketable commodity and with no contrary evidence available there could be no reason to disbelieve the same.

13. The gold in lump being not proved to be the marketable commodity, the same would not fall within the definition of excisable goods and when that is so, the contention of the Department that Classification List ought to be filed accordingly and same should become chargeable to duty, does not survive.

14. The marketable commodity is only the Gold Bars and for that at the relevant time, Exemption Notification No. 94/81 was available.

15. The approach of the Collector (Appeals), therefore, does not warrant any interference and hence both the appeals are rejected.

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