

Customs, Excise and Gold Tribunal - Mumbai

Commissioner Of Customs & Central ... vs Saraswati Steel Industries on 2 May, 2003

Bench: J Balasundaram

ORDER Jyoti Balasundaram (J), Member

1. The appeal of the Revenue arises out of the order of the Commissioner of Central Excise (Appeals) who has held that the respondents herein are entitled to deemed modvat credit even after crossing the ceiling limit of Rs. 75 lakhs prescribed in Notification 1/93 dated 28/02/1993 in respect of re-rollable material received by them for the manufacture of MS CTD bars/round bars/MS plains. In coming to his conclusion he relied upon the Tribunal decision in the case of CCE v. Shri Venkateshwara Steel Industries 1996 (86) ELT 446.

2. I have heard both sides.

3. The issue in dispute now stands squarely covered in favour of the Revenue by the larger bench decision in the case of Digambar Foundary v. CCE, Allahabad 2000 9118) ELT 85. Therefore the finding of the Commissioner (Appeals) that the assessee is eligible to deemed credit even after crossing the exemption limit of Rs. 75 lakhs as long as their specified clearances were within the limit of Rs. 2 crores cannot be sustained. Accordingly I set aside the same.

4. However, while doing so, I hold that the demand of Rs. 3,81,709/- confirmed against the respondents by the adjudicating authority, whose order is now restored cannot be confirmed against the respondents as the notice has been issued not to them, but to M/s. Swastik Steel Traders. Therefore the only amounts, that can be confirmed are those covered by show cause notices dated 18/12/1994, 19/10/1994, 23/01/1995, 23/09/1994 and 19/04/1995. Learned counsel for the respondents at this stage raise the plea that the show cause notices against the respondents are without jurisdiction as they have been issued by the Superintendent who is not the proper officer, in the light of the Board's circular No. 66/88 F. No. 267/86/88-Cx.8 dated 20/12/1988 and as accepted by the Tribunal in the case of Genuine Engineering (P) Ltd. v. Collector 1999 (109) ELT 702. Learned counsel also raised the plea that the show cause notices dated 28/09/1994 and 19/10/1994 were initially made answerable to the Assistant Commissioner but later transferred to the Additional Commissioner by a corrigendum, which according to him is not permissible in the light of the Tribunal's decision in the case of National Transport Company v. CC, Mumbai 2003 (152) ELT 373 wherein it has been held that in the absence of notification issued by the Central Government under Section 4 of the Customs Act, notice made answerable to the Commissioner of Customs, Air Cargo, could not be adjudicated by Commissioner of Customs (Adjudication), Mumbai.

These two submissions are points of law raised but since they have been raised only at the stage of appeal before the Tribunal during the course of arguments, I deem it necessary that these aspects should be considered by the Commissioner (Appeals) to whom I remand the case after setting aside the impugned order. Fresh orders shall be passed by him after extending a reasonable opportunity of hearing to the respondents.

5. The appeal is thus allowed by remand.