

Minerals and Metals Trading Corporation of India, Ltd.

Vs

Union of India and Others

Civil Appeals Nos. 877-879 of 1967

(A. N. Grover, D. G. Palekar, K. S. Hedge JJ)

24.08.1972

JUDGMENT

GROVER, J. -

1. These appeals by special leave are from an order of the Government of India passed in November, 1966, refusing to refund the duty charged on 200 metric tons of wolfram imported by the appellant Corporation from the U. S. S. R.
2. The facts are not in dispute. In October, 1963, the appellant entered into a contract with a Moscow concert for the purchase of 200 metric tons of wolfram concentrate. The chemical composition of the goods apart from other components was to contain WO₃ the minimum percentage being 65%. The Office of the Chief Controller of Imports and Exports, Government of India, granted an import licence on November 21, 1963, permitting import of the aforesaid wolfram ore. The goods arrived in Bombay on January 14, 1964. It appears that certain tests were carried out by the Deputy Chief Chemist of Customs. The customs authorities levied duty under Item 87 of the First Schedule - Import Tariff, at the rate of 60% amounting to Rs. 4,13,769.24. The appellant paid that amount under protest. The appellant claimed refund on the ground that no duty was leviable as the goods imported fell either under Item 28 or 70(7) of the said Schedule. On September 14, 1964, the Assistant Collector of Customs (Refund Section) held that the "goods imported were in powder form and were found to be mainly composed of tungsten oxide with small portion of iron and manganese oxides. The term 'ore' mentioned in the text of Item 26, I.C.T., is confine to articles which are in the form or condition in which they are mined. As such, ores in powder form cannot qualify for assessment under Item 26, I.C.T., as they are not in the condition in which they are mined. Further the goods imported are wolfram ore concentrate and not wolfram ore as mixed. Concentration of ore is considered a manufacturing process which will exclude its assessment under Item 26, I.C.T."
3. Three orders were passed by the Assistant Collector because the goods had been imported in three consignments. The matter was taken in appeal to the Appellate Collector of Customs. He disposed of the matter in January, 1965. Before him a good deal of evidence was produced both from authoritative books and in the shape of certificates from experts that the goods were metallic ore. The Appellate Collector, however, held that the "goods in question were not subjected to simple washing with water but were made of special specifications by 'dressing' and are therefore not classifiable as 'ores'." The appellant then took the matter in revision to the Government. The order of the Government was passed by the Joint Secretary on November 25, 1966. According to his view examination of the sample of good showed that the goods were in the form of fairly uniform granules. Further they had been separated not only from the rock but also from various other

impurities and had been subjected to such processing as would take them out of the category of metallic ore. Thus the correct position was that the goods imported were intermediary articles between ore and metal and had been correctly assessed under Item 87.

4. The relevant entries in the Import Tariff contained in Annexure L of the special leave petition may be set out :

#-----	Item Name of Article
Nature of duty StandardNo. rate of X X-----	
----- 1 2 3 4 5-----	
Mineral Products	26. Metallic ores all X X X sorts except ochres and others pigments Free ores and antimony ore.70(7). Cobalt chromium tungsten magnesium and all other nonferrous virgin metals not otherwise specified. X Free Section 12 (Articles not otherwise specified)87. All other articles Revenue 60 per cent. not otherwise ad valorem." specified-----##

5. The short question that has to be decided is whether wolfram ore WO₃ 65% falls within Item 26 which covers metallic ores of all sorts with the exceptions mentioned therein. It is and cannot be disputed that wolfram ore which was imported does not fall within the exceptions. All that had, therefore, to be determined by the authorities was whether such ore was a metallic ore. In Stroud's Judicial Dictionary, Vol. 3, page 2020, it is stated that "ore" is a metal in its crude state separated from the rock. In the well known treatise on Tungsten, its Metallurgy, Properties and Application by Colin, J. Smithells, 3rd Ed., it is stated that tungsten ores rarely occur in massive form. These ores are usually found in narrow veins. "The tungsten content of the ore as it is mined is usually 0.5 to 2 per cent., although it amounts to 6 per cent. in rare instances. The concentration of tungsten ores depends chiefly on gravity methods, taking advantage of the high density of the metal, although flotation methods are also used. The concentrates, which contain 60-70 per cent. WO₃ ".....". On page 12 of Smithells' book it is stated that tungstens are should in Europe under Contracts A and B given in Appendix I. The form of Contract A in the Appendix reads as follows :

"Messrs.

We have this day..... you the following Chinese wolfram ore of good merchantable quality, containing minimum 65% WO₃....."

6. The certificate, date January 13, 1965 of Derby & Company contains the following statement :

"In accordance with International wolfram ore contract 'B' which is the standard form, on which the vast majority of wolfram ore concentrates are based, such ore of normally acceptable merchantable quality contains a minimum of 65% WO₃.

Wolfram bearing material as mined, contains frequently less than 0.5% of WO₃ and as much as a content of 2% of WO₃ is rare. In order to produce a usable ore concentration operations are necessary which involve crushing, washing and similar process separating the useless gangue to bring it to a minimum 65% WO₃ content without which it is not regarded as an acceptable wolfram ore or wolfram concentrate and useless to consuming industries. Basic operations bringing the material to such a standard are not a manufacturing process but form part of normal wolframite mining activities."

7. According to a letter, dated February 3, 1965, from the Director of National Metallurgical Laboratory to the Controller of Customs wolfram ore is always selectively mined in the technical terminology. The selectively mined tungsten contains about 70% WO₃. Such selective mining does not constitute a manufacturing process. Unless selective mining is done the tungsten ore cannot be exported or even sold in the country of its origin. Thus the import of selectively mined tungsten ore containing 65% WO₃ or more should not be regarded as the import of a product which has been manufactured overseas and has passed through the manufacturing process. The expression "selectively mined" means that the wolfram ore is detached and taken out from the rock in which it is embedded and this is done by crushing the rock and sorting out pieces of wolfram either by hand or by washing or magnetic separation. The appellant produced certificates from well known analytical Consulting and Technical Chemists. According to R. V. Briggs & Co. who claim to have been analysing various ores and minerals including wolframite for over sixty years this ore is always concentrated as part of the mining operations. The normal method is by washing the crushed ore, thereby freeing the mineral from the gangue. The certificate from Derby & Co., London has already been referred to. Along with the appellant's statement of the case an extract from the Brussels Tariff nomenclature has been attached as Annexure A. In Chapter XXVI with the heading metallic ore, etc. Para 26.01 deals with metallic ores and concentrates..... The relevant and material portions from these extracts may be reproduced :

"Ores are seldom marketed before 'preparation' for subsequent metallurgical operations. The most important proprietary processes are those aimed at concentrating the ores.

For the purposes of the present hearing, the term 'concentrates' applies to ores which have had part or all of the foreign matter removed by special treatments, either because such foreign matter might hamper subsequent metallurgical operations or with a view to economical transport.

Processes to which products, physico-chemical or chemical operations, provided that they are normal to the preparation of the ores for the extraction of metal. With the exception of changes resulting from calcination, roasting or firing (with or without agglomeration), such operations must not alter the chemical composition of the basic compound which furnishes the desired metal.

The physical or physico-chemical operations include crushing, grinding, magnetic separation, gravimetric separation, flotation, screening, grading, agglomeration of powers (e.g., by sintering or pelleting) into grains balls or briquettes (whether or not which the addition of small quantities of binders), drying calcination, roasting to oxidise or magnetise the ore, etc. (but not roasting for purposes of sulphating, chlorinating, etc.).

The chemical processes are aimed at eliminating the unwanted matter (e.g., dissolution)."

Among the ores specifically mentioned to which the above statement applies is tungsten "or wolfram". As against this the only evidence put in by the revenue consisted of the test report of the Deputy Chief Chemist (Annexure E). After giving the necessary particulars it was stated by him that the samples were not ore as mined.

8. We are wholly unable to comprehend how in order to fall under Item 26 the ore has to be as mined. There is a good deal of force in the argument of Mr. Setalvad for the appellant that the normally acceptable merchantable quality of wolfram or tungsten contains a minimum 65% WO₃. This is the usable ore and it is in that sense that it is commercially understood. Wolfram ore when

mined contains only 0.5 to 2 per cent. WO_3 and in order to make it usable and merchantable ore with minimum 65% WO_3 , concentration is necessary. If Item 26 of the Import Tariff is to be restrict to wolfram being material containing 0.5 to 2 per cent. WO_3 it would be mainly rock which can neither be imported in large quantity and which will have no market. The separating of wolfram ore from the rock to make it useable ore is a process of selective mining. It is not a manufacturing process. The important test is that the chemical structure of the ore should remain the same. Whether the ore imported is in powder or granule form is wholly immaterial. What has to be seen is what is meant in international trade and in the market by wolfram ore containing 60% or more WO_3 . On that there is a preponderating weight of authority both of experts and books and of writings on the subject which show that wolfram ore when detached and taken out from the rock in which it is embedded either by crushing the rock and sorting out pieces of wolfram or by washing or magnetic separation and other similar and necessary process it becomes a concentrate but does not cease to be ore. Unless the ore is roasted or treated with any chemical it cannot be classed as processed.

9. It is common ground that the wolfram ore which was imported by the appellants was never subjected to any process of roasting or treatment which chemicals to remove the impurities. It thus remained wolfram ore concentrate containing 65% WO_3 which was of the merchantable quality and was known commercially as such and imported as ore. Apart from all this it must be remembered that in interpreting items in Taxing Statutes resort should be had not to the scientific or technical meaning but to the meaning attached to them by those dealing in them in their commercial sense. There can, therefore, be no manner of doubt that the goods imported by the appellants fell within Item 26 of the Import Tariff and no duty was leviable on them. The appellants were entitle to the refund of the amounts which were paid by them by way of duty.

10. For the reasons given above the appeals are allowed with costs and the impugned orders including that of the Central Government, dated November 25/29, 1966, are hereby set aside. The respondents are directed to make appropriate orders for refunding the amounts collected from the appellants by way of duty on the goods in question. One hearing fee.

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